A REVIEW

OF THE

OFFICIAL AND UNOFFICIAL OPINIONS

EXPRESSED ON

THE BILL TO IMPROVE THE LAW

RELATING TO

SALES OF LAND FOR ARREARS OF REVENUE IN THE BENGAL PRESIDENCY;

TO WHICH IS APPENDED

THE BILL, SHOWING THE AMENDMENTS PROPOSED TO BE MADE ON ACT I. OF 1845.

BY

P. C. TAGORE.

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To THE HONORABLE J. P. GRANT,

&c., &c., &c.

SIR,

I HAVE several reasons for inscribing these pages to you. First, you are the originator of an important measure which it is the design of this publication to promote; Secondly, I had the honor to co-operate with you in the preparation of that measure; and, Thirdly, it is in consequence of a suggestion of yours, that I have systematically arranged and reviewed the opinions and arguments for and against that measure, and am about to commit the result to the candid judgment of those to whom the Bill is intrusted.

The measure to which I refer, is a Bill for regulating Sales of Land for arrears of Revenue, which is now under consideration in a Select Committee of the Legislative Council.

Respecting the merits of that Bill there exist wide differences of opinion between the Honorable the Lieutenant Governor of Bengal, the Board of Revenue, and other public functionaries and local institutions connected with the revenue administration. It will afford me sincere satisfaction if, by the present exposition, I should succeed in promoting greater harmony and agreement, on a matter of so much interest to the landholders and agricultural population of the permanently settled Provinces.

Many of the opinions I have ventured to express will, I am aware, be found at variance with the opinions of persons, whose qualifications and experience give to their statements more or less of authority and weight. All I ask for my own testimony is, a calm and impartial examination.

This I may, perhaps, be permitted to say in my own behalf. The views I have set forth are founded on a conviction of their soundness, and are independently and disinterestedly given. They are the fruit of no inconsiderable experience and of long and careful deliberation. The motive which now prompts me to give them this form of expression is a desire to facilitate the adoption by the legislature of a measure which, in my humble judgment, is calculated to serve—not any particular or partial interest—but the general benefit of all concerned, as well of rulers and subjects on the one hand, as of landholders and tenants on the other.

I have the honor to be,

Sir,

Your most obedient and faithful servant,

PROSONNO COOMAR TAGORE.

1*st March* 1858.

A REVIEW

OF THE OPINIONS ON THE REVENUE SALE BILL.

In reviewing the body of the opinions which have been expressed on Mr. Grant's proposed Sale Law, it is but fair to those whose sentiments are commented upon, to record an abstract of what they have said. The remarks, therefore, in these pages will invariably be preceded by a *precis* of the opinions reviewed. We commence with the General Observations that have been made on the provisions of the Bill, and shall proceed *seriatim* with the observations relating to particular Sections.

GENERAL OBSERVATIONS.

LIEUTENANT GOVERNOR, *North-Western Provinces.*

The Lieutenant Governor of Agra expresses his decided opinion that the proposed law should not be made to extend to the districts under his Government; that some of its provisions would have a bad effect, while others (such as those for the protection of under-tenures paying rent) would not be applicable to the circumstances of those districts; and that, although Sections IX, XLIV, XLV, and XLVI, might, in principle, be with propriety enacted for the North-Western Provinces, yet experience has not shewn them to be practically much required.

REMARKS.

The objection of the Lieutenant Governor of the North-Western Provinces to the extension of the Bill appears to be reasonable, as in the districts which are under periodical settlement no permanent protection, either as to possession or the fixed nature of the rent, can be given to the tenant or the holder of under-tenures.

The Sections (XLIV, XLV, and XLVI) referred to relate to the provision for recovery of arrears of rent due to a defaulter, punishment for contempt, and default in making deposit to be considered a contempt. For the second and third a remedy has already been provided by the Indian Penal Code, and for the first the defaulter can always have the ordinary civil court to assist him in the recovery of the arrear; it is, therefore, unnecessary to extend these Sections to the North-Western Provinces.

The Lieutenant Governor of Bengal has offered some observations and suggestions, which will be noticed under the Sections to which they severally relate.

MR. R. F. HODGSON, *Collector of Behar.*

Mr. Hodgson prefers the existing to the proposed law, which, he observes, does not appear to be absolutely called for. He enters into a detailed exposition of the points of difference between the two, and gives reasons for his preference of the former. (*See paragraphs 2 to 4 and from paragraph 16 to the end of his letter printed at page 100 of "Further Papers No. 4."*) To sum up his objections to the Bill, he thinks that it will "lead to abuses which, though dimly foreshadowed in his mind, are not sufficiently potent to authorise the expression of

them;" that it will conduce to great litigation, to a large increase of labor, and to great confusion and trouble in the treasury department of a collector's office; and that there is nothing introduced which the laws now in force do not, with a little more delay and difficulty, equally provide for.

MR. W. TUCKER, *Officiating Collector of Monghyr.*

Mr. Tucker believes that a trifling alteration (which the Board of Revenue could effect without the interference of the Government) in the present Butwarrah law would render any summary division unnecessary; whereas by filing petitions for such summary divisions just before the quarter-day (which would prevent the sale of their shares) endless confusion and serious loss of time and revenue might be caused by fraudulent parties. Mr. Tucker observes further that registration of under-tenures is already allowed in general terms by Section XXVI, Act I. of 1845, the inutility of which provision, at least in the district of Monghyr, is manifest by the fact that no under-tenant has ever availed himself of it; and, as under-tenants appear to him sufficiently protected by Section XXVI, Act I. of 1845 and Section X, Regulation V. 1812, he thinks that registration, if carried into effect to any extent, would materially increase the difficulty of realising arrears of revenue from estates, and open the door to much fraud. For these reasons, the proposed law is, in Mr. Tucker's opinion, unnecessary and (wherein it differs from Act I. of 1845) impolitic. (*See from paragraph* 3 *to end of his letter "Further Papers No. 4," pages* 38 *and* 39.)

MR. E. RUSSELL, *Officiating Collector of Bhaugulpore.*

Mr. Russell sees no objection to the proposed Act, with the exception of the increased work which will be thrown on the collector's establishment, which is already too small for the work expected of it. (*See "Further Papers No. 4," pages* 40, 41.)

MR. F. A. E. DALRYMPLE, *Collector of Dinagepore.*

Mr. Dalrymple observes that the present law has worked so well for the last ten years, and is acknowledged to be so well adapted to the requirements of our revenue system, as to render any interference with it, in his judgment, unnecessary and uncalled for. The incorporation of its provisions in the present Bill he regards as sufficient evidence of the opinion entertained of their value; and he regrets that, since additional provisions on the subject are considered necessary, they should not have been made the basis of a separate and distinct Act, instead of being incorporated in the present Bill.

REMARKS.

These gentlemen object to the proposed law on the grounds set forth by them, but the advantages of the amended law have not, it would seem, been sufficiently weighed by them. The weak sharer will be protected from the fraud, chicanery, and oppression of his wealthy and powerful sharer; the never-ending, intricate, and troublesome work of Butwarrah it will, in many cases, be found unnecessary to apply for; and the false or mock application to enter into Butwarrah registry only to protect the share of an estate from revenue sale will no longer be requisite. The permission to make deposits of public securities is equally an advantage to Government and the proprietors of estates, particularly to those who are residents of any district other than that in which the estate is situated, and absentees from the country; and the plan for the protection of under-tenures is itself of so much importance, that no consideration ought to deter us from introducing the proposed system.

GENERAL OBSERVATIONS.—(*continued.*)

The Indigo Planters' Association.

The Indigo Planters' Association urge that the same protection which is provided by the Bill for under-tenures created immediately by zemindars, should be extended to other under-tenures of great value, such as dur-putnees, dur-izarahs, &c. They also observe that a very elaborate and complicated procedure is provided by the Bill for the attainment of its objects; and that many of the details of this procedure appear open to objections and will tend to impair the value of the proposed protection.

Mr. Theobald (Secretary to the Association) not only approves of the objects of the Bill, but also defends its principles by endeavoring to show that it is not unfavorable to zemindars. *(See pages 2 to 5 of " Further Papers No. 2.")*

Remarks.

The suggestions of the Indigo Planters' Association, in respect to the protection to be given to the second and other degrees of under-tenures, will be noticed under the Sections to which they relate.

OBSERVATIONS UPON SECTION III of the BILL.

" Sect. III.—Upon the promulgation of this Act, the Board of Revenue at Calcutta shall determine upon what dates all arrears of Revenue and all demands which, by the Regulations and Acts in force, are directed to be realized in the same manner as arrears of Revenue, shall be paid up in each permanently settled district under their jurisdiction, and in each of the districts not permanently settled in the Province of Cuttack: in default of which payment the estates in arrear in those Districts, except as hereinafter provided, shall be sold at public auction, to the highest bidder. And the said Board shall give notice of the dates so fixed in the Official *Gazette*, and shall direct corresponding publication to be made, as far as regards each District in the language of that District, in the Office of the Collector or other Officer duly authorized to hold sales under this Act, in the Courts of the Judge, Magistrate, (or Joint Magistrate, as the case may be,) Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, and at every Thannah station of that District; and the dates so fixed shall not be changed except by the said Board by advertizement and notifications, in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect."

Latest day of payment in permanently settled districts and in Cuttack.

Lieutenant Governor of Bengal and Board of Revenue.

The Lieutenant Governor of Bengal draws particular attention to the remarks of Mr. Stainforth and the other Members of the Board of Revenue on this section, as to the effect of barring, in such districts as Sylhet, all modes of collecting the revenue except by sale under the proposed Act. In Sylhet, it is stated, there are upwards of seventy-thousand recorded estates on the collector's roll, all minutely sub-divided, and the revenue is collected partly by distraint and sale of personal property of defaulters under Section IV, Regulation I. of 1801. The legality of the mode of collection ever since the passing of Act I. of 1845 has been a matter of doubt, and the Lieutenant Governor thinks that the practice should be made legal if it be not so. The Board propose (and His Honor entirely approves of the suggestion) that the Section of the Regulation above referred to should be re-enacted, with this alteration, however, that the express sanction of the Board should not in every instance be applied for with a full report of the circumstances under which recourse to distraint is considered necessary, but that the Board be empowered to invest such collectors as they consider proper with the power of distraining the personal property of revenue defaulters before bringing the estates in balance to sale.

Remarks.

Without entering into any discussion as to the intent or tru econstruction of Section IV, Regulation I. of 1801, it should be considered whether it will be proper to give a discretionary power to the Board of Revenue to invest

any collector with the power of distraint, only for the sake of the inconvenience felt in a particular district in consequence of there being seventy-thousand recorded estates in the *Towjee*, paying on an average a small amount of annual revenue. If the Board of Revenue be invested with such power, which is of the nature of legislation, it will exercise a power other than executive. It is doubtful whether the Legislative Council has authority to transfer its functions to any Executive Officer. Besides, suppose the Board, after being lawfully invested with such discretionary power, extend the distraint law either to Hooghly or Burdwan, the landholders will have no opportunity of knowing of such extension before-hand nor be in a position to object to the measure.

It is a question for consideration whether the proposed distraint law be not inconsistent with Section VII, Regulation I. of 1793, which provides "that, in the event of any zemindar, independent talookdar, or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, or his or her heirs or successors, failing in the punctual discharge of the public Revenue, which has been or may be assessed upon their lands under the above-mentioned Regulations, a sale of the whole of the lands of the defaulter, or such portion of them as may be sufficient to make good the arrear, will positively and invariably take place." Now, by the law of the permanent settlement the only power retained in the hands of Government in case any zemindar fail in the punctual discharge of the public Revenue, is the sale of the whole or part of the land of the defaulter from which the arrear may be due ; and such being the wording of the contract between Government and the landholders, it is nevertheless proposed to introduce another kind of intermediate coercive measure : this is certainly not according to the terms of the contract. Such an intermediate measure can only be lawfully adopted if Government give up the right of sale of property for arrears and enforce attachment of the same, to be followed up, if the whole amount of the arrears be not realized, by the distraint and sale of personal property.

It is likewise apparent that, if the distraint law be introduced either generally or in a particular district, the landholders will have no means of getting rid of an unprofitable estate, as the collector will for ever continue to realise the arrear by distraining the personal property of the defaulter and his heirs. Such a measure would not only be unjust but impolitic, as it would discourage industry, reduce the value of landed property, and ruin many a family of districts like Sylhet.

Although Mr. Stainforth's opinion is opposed to that of Mr. Gouldsbury as recorded in his letter No. 208, dated the 13th December 1856, paragraph 2, yet, under the above circumstances, and consistently with the interests of both parties, a special law may be passed, similar to Sections IV and V, Act VIII. of 1846, which is applicable to the North-Western Provinces, for any particular district where such measure may be called for ; thus introducing in Bengal the *Estafa* system, namely, that every landholder at the commencement of the year is to be at liberty to relinquish his estate and free himself from future liability.

MR. F. GOULDSBURY, *Commissioner of the Rajshahye Division.*

Mr. Gouldsbury does not see why the district of Sylhet should be exempted from the operation of the proposed law. It is true that landed property is very minutely sub-divided there. But when he was in charge of that collectorate, he found no difficulty in realising the revenue under the Sale Law then in force, Regulation XI of 1822 ; and although the zemindars often withheld payment of the arrears due until the last moment, they almost invariably produced the money (sometimes only a few annas) when their estates were put up for sale. In short, Mr. Gouldsbury (having seen in Cuttack how ineffectual the provisions of Regulation X of 1818 were for this purpose, and how much oppression was occasioned by the dustuck system in that province) is averse to any of the other modes of collecting the revenue.

SECTION III.—*(continued.)*

MR. C. STEER, *Commissioner of Chittagong.*

Mr. Steer has not had an opportunity of seeing the grounds upon which the Board have objected to the supersession of Regulation I of 1801; but he doubts not that the grounds are very cogent as regards Sylhet and other districts similarly circumstanced as Sylhet. With regard, however, to the Chittagong districts, he observes that the above Regulation has been inoperative since the enactment of the present Sale Law, and he is not aware that any inconvenience has been experienced by restricting the mode of collecting the revenue to the uniform procedure laid down in Act I. 1845. But if the cancelment of Regulation I. of 1801 can be shown to be likely to be attended with serious difficulties and evil consequences in other places, a good reason would certainly seem to exist why that Regulation should not be repealed as one of the modes for the recovery of the Government revenue.

REMARKS.

Mr. Gouldsbury brings his personal experience in favor of the extension of the provision in Section III to the district of Sylhet, and is averse to any exemption. His opinion is, however, opposed to that of one likewise high in the service, Mr. Stainforth. The opinion of the latter is supported by the present Members of the Board and the Lieutenant Governor of Bengal. The objection in principle to the exemption and the application of the rule of Section IV. Regulation I. of 1801, to districts like Sylhet, have already been treated of, and it is unnecessary to renew the question here.

Mr. Steer's remarks have reference to the same subject.

OBSERVATIONS UPON SECTION IV.

Latest day of payment in other Districts.

"Sect. IV.—In the Province of Benares and in Districts not permanently settled, with the exception of the Districts in the Province of Cuttack, no sale shall take place for arrears of land revenue or other demands of Government, without the special sanction of the Board of Revenue previously obtained in each several case of sale. Provided that the said Board, at the time of authorizing such sale, shall fix the latest day on which in each case such arrears or demands shall be received."

MR. E. A. SAMUELLS, *Commissioner of Cuttack.*

Mr. Samuells concurs in the proposed discontinuance of the present practice of obtaining the previous sanction of the Board of Revenue to sales of estates in Cuttack, as obviating the necessity of submitting periodically to the Board voluminous lot-bundees, the preparation of which imposes a serious task on the collector's establishment; and as preventing a postponement in the publication of the notices, which frequently happens consequent on the delay of the Board in sending their answer.

REMARKS.

The omission from this Section and inclusion in Section III of the Province of Cuttack was adopted on the suggestion of the Revenue Board. Mr. Samuells, the Commissioner of the Division, concurs in the proposed alteration on the grounds recorded by him.

OBSERVATIONS UPON SECTION V.

"Sect. V.—Provided always, that no estate, and no share or interest in any estate, shall be sold for the recovery of arrears or demands of the descriptions mentioned below, otherwise than after a notification in the language of the District, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed for a period of not less than fifteen clear days preceding the date fixed for payment according to Section III or Section IV of this Act as the case may be, in the Office of the Collector or other Officer duly authorized to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertized lies, in the Courts of the Principal Sudder Ameens and Sudder Ameens of the District, and in the Moonsiff's Court and Police Thannah of the Division in which the estate to which the notification relates, or a part of it, is situated, the same to be certified by the receipt of the Officer at whose office such notification may have been affixed; and also at the Cutcherry of the malgoozar or owner of the estate, or at some conspicuous place upon the estate, the same to be certified by the peon or other person employed for the purpose."

Proviso in the case of certain descriptions of arrear.

First. Arrears due from estates in the Province of Benares.
Secondly. Arrears due from estates, not permanently settled other than estates in the Province of Cuttack.
Thirdly. Arrears other than those of the current year, or of the year immediately preceding.
Fourthly. Arrears due on account of estates other than that to be sold.
Fifthly. Arrears of estates under attachment by order of any judicial authority.
Sixthly. Arrears due on account of tuccavee, poolbundee, or other demands not being land Revenue, but recoverable by the same process as arrears of land Revenue.

Mr. E. A. Reade, *Senior Member of the Board of Revenue*, N. W. P.

Mr. Reade observes that Clause 3 of this Section provides that the sale process shall extend only to arrears of the current year or of the year immediately preceding; and that, according to Section XLIII, the restriction applies to arrears due on account of estates, and to other demands of Government. He considers it most necessary to protest against this important alteration of the existing law as respects the North-Western Provinces and the Province of Benares, where Government not unfrequently suspends a portion of its demand, and further permits a postponement of the recovery of the instalments stipulated, on account of calamities of season; and the same indulgence is also shown in advancing large sums of Tuccavee for the purpose of constructing works for agricultural extension and improvement. If the sale process be barred after the lapse of two years, the Government will be deprived of its only effectual remedy in case of non-fulfilment of conditions in the cases referred to; and if a limit must be fixed, Mr. Reade thinks it should not be less than ten or twelve years.

Mr. C. C. Jackson, *Junior Member of the Board of Revenue*, N. W. P.

Mr. Jackson concludes (from the provision that "no estate, &c. shall be sold for the recovery of arrears or demands of the descriptions mentioned below otherwise than after a notification") that sale is intended to be restricted to the recovery of arrears of the descriptions mentioned below; though the literal meaning of the sentence would be that the notification was only requisite for the recovery of arrears of the descriptions explained below, and that, for other descriptions of arrears, the notification was not a necessary preliminary to sale. He entirely agrees with Mr. Reade that the restricting of recovery by sale to arrears of the current and the preceding year, will be attended with much inconvenience in the North-Western Provinces, and certainly with occasional loss of revenue, as it will lead to the relinquishment of revenue demands which have been postponed either in consequence of bad seasons, or of bad management by the zemindars, or of recusancy of a portion of the shareholders; and these untoward incidents (which are frequent in the management of estates) are remedied by the timely application of other processes of recovery, which, however, would fail of success, if the power of the eventual recovery, as a last resource, by sale, were relinquished. As regards Tuccavee, Mr. Jackson considers the objection still stronger, as the inability to recover it by sale process if due for more than two years, will effectually put a stop to the benefits resulting from judicious advances on that account.

SECTION V.—*(continued.)*

LIEUTENANT GOVERNOR, *North Western Provinces.*

The Lieutenant Governor of Agra, however, observes that the above objections appear founded on a misapprehension of the true scope and effect of Clauses 1 to 6, which do not exclude recovery of any outstanding arrears in these provinces by the sale process, but leave the course to be pursued in the Province of Benares and in districts not permanently settled, to the exclusion of Cuttack, the same in all respects as they are at present under Section V, Act I. of 1845.

REMARKS.

The objections taken by Messrs. Reade and Jackson having been explained by the Lieutenant Governor of the North-Western Provinces, they require no further observation.

MR. STAINFORTH, *Member of the Board of Revenue, Lower Provinces.*

Mr. Stainforth remarks, with reference to the 6th Clause, that, if an under-tenure amounts to an interest in an estate, the terms of the Section are deficient in precision, as, by Section XXV, Regulation VII. 1799, rent can under certain circumstances be recovered as revenue, and its realisation enforced by sale after the notice prescribed by Act VIII. 1835, which is other than that prescribed in Section V of the Bill.

MR. H. M. REID, *Officiating Collector of Burdwan.*

Mr. Reid thinks that what is meant by "permanently settled" estates in Clause 2 should be more clearly defined. The Board of Revenue, in their Circular No. 13, dated 18th May 1842, ruled that estates could not be sold under the general provisions of the Sale Law until their settlements had been confirmed by competent authority. The mode of procedure adopted consequent on this ruling has been to dispense with the fifteen days' special notice of sale in all cases where the settlements, having been regularly completed with the proprietors under the provisions of Regulation VII. 1822, had been confirmed by competent authority, even though those settlements were only temporary. On the other hand, estates settled in perpetuity by the settlement officer or collector (the settlement of which, however, had not been confirmed by competent authority) could not be sold without the previous issue of the fifteen days' special notice. Mr. Reid does not think it to be the intention of the Act to put the temporarily settled estates of the districts of Bengal in a more favorable position than they before occupied or than the Cuttack estates of the same calibre are henceforward to occupy; and he thinks, therefore, that the wording of the Section should be so altered as to continue the Bengal temporarily settled estates, confirmed by competent authority, on the same footing as before, and as it is now proposed to place the Cuttack ones. In the same manner, the Section ought, it appears to him, to define that permanently settled estates in Bengal districts shall not be sold without the special notice, unless their settlement has been confirmed by competent authority.

MR. F. A. LUSHINGTON, *Officiating Collector of the 24-Pergunnahs.*

Mr. Lushington observes, with reference to Clause 6, that a more detailed description and specification of what is intended by the words "or other demands not being land revenue" is as desirable as it would prove advantageous in the prevention of subsequent disputes. For instance, in the case of embezzlement of public money by a Nazir or treasurer or other officer in charge of Government funds, and of the sale of the delinquent's

SECTION V.—*(continued.)*

property placed in security, he presumes the sale would be effected under this Clause and Section; but he thinks it would be preferable to have the examples specified.

REMARKS.

The suggestion of Mr. Stainforth may be adopted; but in doing so, it will be necessary to add, after the word "estate" in the 3rd line* of the Section, the words "or other property," and to repeat the same words after the word "estate" in lines 22, 28, and 29.

It will also be better to omit from Clause 6 the words "not being land revenue," in order to make the Clause general. In fact the limitation is unnecessary, as Clause 3 provides for a sale on account of old balances due from an estate, and Clause 4 likewise provides for a sale for all descriptions of arrears whether recent or of long standing, or due on account of an estate other than that to be sold; hence every kind of land revenue being included in these Clauses, there appears no necessity for the restrictive words in Clause 6.

OBSERVATIONS UPON SECTIONS VI, VII, AND VIII.

Notifications of sale to be issued, and no tender after latest day of payment to stop the sale.

"VI.—The Collector or other Officer duly authorized to hold sales under this Act shall, as soon as possible after the latest day of payment fixed in the manner prescribed in Section III or Section IV of this Act, issue notifications in the language of the District, to be affixed in his own Office and in the Court of the Judge of the District, and to be published in the official *Gazette*, specifying the estate or estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than fifteen or more than thirty clear days from the date of affixing the notification in the Office of the Collector or other Officer as aforesaid. And, except as hereinafter provided, all estates so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the presence of the Collector or other Officer as aforesaid, and shall be sold to the highest bidder. And no payment, or tender of payment, made after sunset of the said latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion."

Notice to ryots, &c.

"VII.—Whenever an estate is notified for sale as provided by Section VI of this Act, the Collector or other Officer as aforesaid shall affix a proclamation in the language of the District, in his own Office, and as soon thereafter as may be in the Moonsiff's Courts and Police Thannahs within which the estate or any part of it is situated, and also at the Cutcherry of the malgoozar or the owner of the estate, or at some conspicuous place upon the estate, forbidding the ryots and under-tenants to pay rent to the defaulting proprietor from the date of the day after that fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums paid after the date aforesaid."

Claims against Government not to invalidate a sale.

"VIII.—No claim to abatement or remission of Revenue, unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever, held or supposed to be held by any defaulter against Government, shall bar or render void or voidable a sale under this Act: nor shall the plea that money belonging to the defaulter, and sufficient to pay the balance or part of it, was in the Collector's hands, bar or render void or voidable a sale under this Act, unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, or after the written agreement provided for in Section XV of this Act, the Collector shall have neglected, or refused on insufficient grounds, to transfer it to the estate."

SECTION VI.

MR. F. B. SIMSON, *Officiating Deputy Collector of Bullooah.*

Mr. Simson suggests that *Gazettes* (plural) should be substituted for *Gazette* (singular), both in this Section and in Section III; while Mr. Lushington *(Officiating Collector of 24-Pergunnahs)* thinks that, as there are two Official *Gazettes* (one an English and the other a Bengalee *Gazette*), it should be defined which of the two is

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*The lines here referred to are as they stand in the copies of the Bill printed for the Council.

intended to be specified, or whether the publication of the notification in either will be sufficient to ensure the validity of the sale. Under the present law, the notices are published in both *Gazettes*, so that no room is left for doubt on this score.

REMARKS.

SECTION VI.

The suggestions of Messrs. Simson and Lushington will be fully met by adding the usual constructive terms in Section L of the Bill.

SECTION VII.

No suggestion has been made with regard to this Section. A verbal alteration, however, appears necessary, namely, the insertion of the words "or other property" after the word "estate," wherever that word occurs.

SECTION VIII.

There is no suggestion offered by any officer on this Section, but it appears necessary in line 13, after the word "under," to add the words "Section III or IV of;" otherwise the general terms "a sale under this Act" may include a sale under Section V.

OBSERVATIONS UPON SECTION IX.

Deposits receivable from persons not proprietors.

"IX. The Collector or other Officer as aforesaid shall, at any time before sunset of the latest day of payment, determined according to Section III or Section IV of this Act, receive as a deposit from any person not being a proprietor of the estate in arrear, the amount of the arrear of Revenue due from it, to be carried to the credit of the said estate at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate. And in case the person so depositing, whose money shall have been credited to the estate in the manner aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the same or any part thereof, it shall be competent to the said Court to order the said party to be put into temporary possession of the said estate or part thereof, subject to the rules in force for taking security in the cases of parties in Civil suits. And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale of the estate, or which he believed in good faith would have been endangered or damaged by such sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the proprietor of the said estate. And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate, the amount so credited shall be added to the amount of the original lien."

As an improvement on the existing law, and as a just and proper provision, this Section is unanimously approved of by the several officers who have remarked upon it, namely, Mr. C. C. Jackson, Mr. Dunbar, Mr. Samuells, Mr. F. B. Simson, Mr. F. A. E. Dalrymple, and Mr. E. C. Craster.

MR. J. DUNBAR, *Member of the Board of Revenue, Lower Provinces.*

Mr. Dunbar thinks that the party making a deposit should be declared entitled to recover the amount of the same, not from the proprietor of the estate (as laid down in the Bill), but from the estate itself, which should be restored to the defaulting proprietor after re-payment in full according to accounts passed and approved by the court.

REMARKS.

The modification made in this Section is unanimously approved of. Mr. Dunbar suggests that the deposit should be declared a lien over the estate; there appears no objection to adopt it, with a certain modification, by

SECTION IX.—*(continued.)*

adding, after the words "from the proprietor of the said estate" in line 36, the words "and the amount so deposited shall be declared to be a lien on it from the date of such deposit."

The qualifying words are added to the sentence in order to protect prior mortgagees, &c., and also to prevent any fraud being practised by the proprietor against the priority of the claimant, as he may continue, while the estate is subject to mortgage, to pay the arrears of revenue as they may accrue through a *furzee* (third party,) and the accumulated claims of such party may in time become so heavy as to render the value of the estate insufficient to meet any other claim.

OBSERVATIONS UPON SECTIONS X, XI, XII, XIII, AND XIV.

Separation of shares held in common tenancy.

"X. When a recorded sharer of a joint estate, held in common tenancy, desires to pay his share of the Government Revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the extent and nature of the interest held in the estate by the applicant. The Collector will then cause to be published in his own cutcherry, in that of the Judge, Magistrate, (or Joint Magistrate, as the case may be,) Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, and in the Police Thannahs in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him. If, within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector will open a separate account with the applicant, and will credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account, shall be held to be that from which the separate liabilities of the share of the applicant commence."

Separation of shares consisting of specific portions of land.

"XI. When a recorded sharer of a joint estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government Revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of sudder jumma heretofore paid on account of it. On the receipt of this application, the Collector will cause it to be published in the manner prescribed for publication of notice in the last preceding Section. In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector will open a separate account with the applicant, and will credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account, shall be held to be that from which the separate liabilities of the share of the applicant commence."

Summary enquiry by the Collector.

"XII. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less than, or is of a different nature from, that claimed by him, the Collector will institute a summary enquiry into the fact of possession, and if he be satisfied that the applicant is really in possession of the share as claimed by him, he will open a separate account for his share, as directed in one or other of the last two preceding Sections. If, in the case of a claimant of specific land, the objection be that the jumma alleged by the applicant to be the separate jumma of his specific share of the lands of the estate is not the jumma which has been recognized as such by the other sharers, the Collector will make a summary enquiry into the fact, and will reject or admit the application. The orders of the Collector under this Section shall be subject to appeal to the higher revenue authorities in regular course, and shall be subject to reversal or alteration by a regular suit in the Civil Courts, provided that such suit shall have been instituted within one year from the date of the final award of the revenue authorities, but not otherwise."

Sale of separate shares.

"XIII. Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of Revenue, the Collector in the first place shall put up to sale only that share, or those shares, of the estate from which, according to the separate accounts, an arrear of Revenue may be due. In all such cases notice of the intention of excluding the share or shares from which no arrear is due, shall be given in the advertizement of sale prescribed in Section VI of this Act. The share or shares sold, together with the share or shares excluded from the sale, will continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of jumma assigned thereto."

Entire estate may be sold under certain conditions.

"XIV. If in any case of a sale held according to the provisions of the last preceding Section, the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of Revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share. If such purchase be completed, the Collector or other Officer as aforesaid shall give such certificate as is provided for in Section XXVII of this Act, to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale. If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after the notification and in the form prescribed in Section VI of this Act, in the same manner as if the entire estate had been in arrear after the latest day of payment."

SECTIONS X TO XIV.—*(continued.)*

BOARD OF REVENUE, AGRA.

The Board of Revenue at Agra consider Sections X to XII inapplicable to the circumstances of the North-Western Provinces; and observe that the allowing every one of the innumerable members of co-parcenary communities the privilege of claiming a separate account in the Tehseeldaree, will not only entail endless labor in the Tehseel Department and offer great facilities and inducements for fraud, but also be unnecessary in cases of partition not involving the dismemberment of the Mehal. Mr. C. C. Jackson (Junior Member of the Board) adds that he would restrict the recovery of revenue due on shares of integral estates to the process of transfer to solvent shareholders. *(See Messrs. Reade's and Jackson's Minutes, pages 3 and 4 of "Further Papers No. 1.")*

LIEUTENANT GOVERNOR, N. W. P.

The Lieutenant Governor of Agra fully agrees with the Board in thinking that the Sections referred to would, as far as they might be made operative, be calculated seriously to derange and injure the revenue administration in the North-Western Provinces.

REMARKS.

The objections taken by the Lieutenant Governor and the Board of Revenue of the North-Western Provinces to the introduction of these Sections in that Province are, from the nature of the temporary settlement of the revenue therein, just and proper, as it is very possible that the proposed system may seriously derange and injure the revenue administration in those Provinces.

LIEUTENANT GOVERNOR OF BENGAL.

The Lieutenant Governor of Bengal would limit the privilege of opening separate accounts to shares paying revenue of fifty Rupees to Government. If that limit be considered too high, His Honor has no objection to a lower standard being taken, so as to enable the Act to be tried at first on manageable terms, and, if it works easily, afterwards extended gradually as may seem fit. As at present drawn it appears to him that the proposed law will, in the words of several of the revenue officers, "swamp the collectors' offices."

But whether the plan of a limit be adopted or not, His Honor suggests the omission from Section XII of the direction to the collector to "institute a summary enquiry into the fact of possession," and makes special reference to Mr. Theobald's remarks on that subject as well worthy of notice. Mr. Theobald (Secretary to the Indigo Planters' Association) observes that the effect of this provision will be to subject recorded shareholders to a second enquiry, for an applicant who proves by a reference to the collector's books that he is a recorded sharer should *ipso facto* be entitled to have the separate account of his share opened; and His Honor adds that, under the system now enforced by the Board, no proprietor's name is recorded by the collector until he has satisfied himself as to the fact of his possession. Mr. Theobald further points out that the enquiry is to be into the *fact of possession*, while the application refers to grounds of title, and possession may or may not go with the title; the question of title, therefore, may be wholly different from that of possession. If unrecorded proprietors were to have the benefit of the Bill there would be some reason for putting it on the ground of possession; but Mr. Theobald can see none why this fact should be enquired into in the case of persons already recorded as having a title. With reference, also, to the variety of applications which the word "possession" will bear, he instances several cases in which the result of an application for opening a separate account must be extremely doubtful, if the right of the recorded sharer is to depend on the question of possession. *(See paragraphs 6 to 11 of the Lieutenant Governor's Minute.)*

SECTIONS X TO XIV.—(continued.)

Mr. Theobald also takes exception to the provision in the Bill that, "if the objection be that the jumma alleged by the applicant is *not* the jumma which has been recognised as such by the other sharers," the collector is to "make a summary enquiry into the fact." As practical difficulties likely to open a wide door to dispute and litigation and to render the success of an application in a great many cases very doubtful, Mr. Theobald asks what *fact* is meant, whether that the jumma paid is the real jumma, or the fact of payment as alleged by the applicant, or the fact of recognition? If of recognition, recognition of what, whether of the payment in fact by the applicant, or of the amount as correct? In establishing recognition also, will the acquiescence of one sharer preclude the others from objecting? Or if one sharer admits the amount to be correct, but asserts that it is too little compared with the sums paid from necessity by the other sharers, will this plea avail in proof of non-recognition? (*See page 7 of " Further Papers No. 2"*).

REMARKS.

The Lieutenant Governor of Bengal proposes to limit the privilege to sharers paying a Revenue of fifty Rupees or more, on the ground that the Act should be tried on manageable terms, instead of swamping the collector's offices with applications for opening separate accounts.

It seems that His Honor has overlooked a material point in the case, namely, if such limitation be adopted, what will be the case where out of four sharers of an estate only one pays revenue less than fifty Rupees and the others pay higher than that sum: would you decline to open an account with the three sharers because the fourth sharer unfortunately pays less than fifty Rupees? The objection is perhaps taken on a supposition that every sharer pays an equal sum, and that each of them pays less than fifty Rupees as Government revenue. If this limitation be adopted, it will not only be unsupported by any just principle, but will cause injustice and hardship to such minor sharers.

The Lieutenant Governor, following the remarks of Mr. Theobald (Secretary to the Indigo Planters' Association), objects to the summary enquiry by the collector into the fact of possession as unnecessary, in consequence of the enquiry having already been made when the name of the applicant was recorded; but the right of summary enquiry is allowed, as stated in Section XII of the Bill, under the following circumstances:

1st. That the applicant has no right to the share claimed by him.

2nd. That his interest in the estate is less than that claimed by him.

3rd. That his interest in the estate is of a different nature from that claimed by him, or

4th. In case the applicant is claimant of specific land on a specific jumma.

In respect to the first—It may happen that, long subsequent to the record of the name of the applicant, the share may have been transferred to others, and formal possession thereof given, but the name of the applicant may be still continued on the record, and the said applicant from some dishonest motive may apply to open an account, while the transferree of the share may, at the same time, apply for *Dakhilkharij* of his name. Under such circumstances should not both cases be proceeded with simultaneously? and since the fact of possession is an essential issue in the case, the enquiry into such point is obviously necessary.

In respect to the second case—It should be considered that, when the name of a co-sharer is recorded jointly with the names of others without any specification of shares of the respective parties, the others may object to the amount of the share, alleging the applicant to be entitled to less than he claims. Here the fact of the respective possession of the parties is a most essential point for enquiry with a view to the allotment of the jumma.

SECTIONS X TO XIV.—(*continued.*)

In regard to the third question—Suppose the estate is given in mortgage under *Bybilwufa*, and the name of the mortgagee is duly recorded at the collectorate, while the mortgagor holds the usual *Ekrars* acknowledging the terms of the transaction and the Mofussil possession, and the revenue is paid *Marfutwary* by the mortgagor; under such circumstances, if the mortgagor, alleging himself to be the owner of the share, apply for opening a separate account, but the mortgagee object to his assumption of ownership, an enquiry as to the fact of possession would be necessary for complying with or rejecting the application in question.

The fourth case is so clear that it does not require much explanation. When disputes arise in respect to allotment of jumma for any specific portion of land attached to an estate, the only measure that can be adopted for the adjustment thereof is to make summary enquiry into the fact and as to the quantity of lands in possession. It is a matter of surprise that, in the face of these facts, Mr. Theobald's proposition and argument should have received favor in so high a quarter.

MR. J. DUNBAR, *Member of the Board of Revenue, Lower Provinces.*

Mr. Dunbar has also made a similar observation to the last. He says that it may frequently happen that a party will be found in possession, and that the specific lands have for some time paid a fixed and recognised jumma; but it may also be clear beyond question that such jumma bears no fair proportion to that left to be discharged by the remainder of the estate. The propriety of legalising such payments under such circumstances appears to him extremely questionable. To receive payment according to a man's interest in a joint estate, as provided for in Section X, he considers fair and reasonable; but he thinks it will be going too far to direct the acceptance of a jumma on a specific portion of a joint estate, often arbitrarily fixed without any reference whatever to that portion and to the rest of the estate. According to these views, therefore, he would leave parties, in the position supposed in Section XI, to disconnect themselves from their co-sharers by the usual Butwarrah process, and he would strike out Section XI altogether and remodel Section XII so as to provide only for cases under Section X.

MR. W. DAMPIER, *Member of the Board of Revenue, Lower Provinces.*

Mr. Dampier does not anticipate any great difficulties in carrying out the provisions of Sections X to XII, nor does he think that the interests of Government are at all likely to suffer from their enforcement. Considering the great jealousy always subsisting among Ijmallee shareholders, and the discordant interests to be consulted, and the fact that almost always some of the shareholders are found adverse to the separation of the others from the joint property, Mr. Dampier thinks that the collector might always be certain to have before him objections (on claims preferred) which would enable him to check or detect any attempted frauds on co-sharers or the Government. Nor does Mr. Dampier apprehend any of the evils which Mr. Dunbar thinks may arise from Section XI. In the districts where the survey has been completed, those records will materially aid the collector in coming to a decision, and although (as Mr. Dunbar states) the jumma on the specific portion may be arbitrarily fixed, yet, so long as it has a fair proportion with regard to its extent and proceeds to the jumma of the entire estate, no injury, Mr. Dampier is of opinion, can be done by admitting the possessor to a separate account; and the collector has, he presumes, the power of rejecting such a claim. Lastly, Mr. Dampier observes that, as the collector's enquiries are confined to the possession of the alleged portion of the estate by the applicant, he would have his order open to revision by the civil court as in *Dahkilkharij* cases.

REMARKS.

Mr. Dunbar's objection refers to the last mentioned case, but it will not be tenable when Mr. Dampier's explanation is taken into consideration.

SECTIONS X TO XIV.—(continued.)

MR. H. RICKETTS, *Member of the Board of Revenue, Lower Provinces.*

Mr. Ricketts, however, would have no appeal beyond the collector. The enquiries under the Section, he observes, are as to the possession of a party and as to the amount of jumma payable should either be contested by another sharer; and one decision in the revenue courts will, he thinks, be sufficient. He is also inclined to allow no appeal to the collector from the decision of his deputy, but he thinks it may be well for the present to admit the interference of the collector to the extent to which he can exercise it in other departments of his office.

REMARKS.

Mr. Ricketts' proposal to dispense with appeals to the revenue authorities may safely be adopted, as the decision of the collector being liable to reversal by three successive decisions of the civil courts, it is no advantage to increase the proceedings before the revenue authorities by multiplying appeals.

MR. H. STAINFORTH, *late Commissioner of Bhaugulpore.*

Mr. Stainforth observes that a law for apportioning the jumma of Mouzahs seems a desirable and necessary preliminary to carrying out fully the objects of Section X. But if Sections X to XIII should be passed as they stand, a fraudulent sharer will frequently sell small shares of land with large shares of jumma, and thus compel co-sharers either to pay those arrears or to allow property larger and more valuable than he has reserved to be sold for arrears of revenue, he making good in future only the jumma unfairly apportioned. To provide also for the unavoidable absence of co-sharers, and at the same time avoid injury to the honest applicant, Mr. Stainforth proposes to allow closure of any account, which may appear to have been unfairly opened, at any time within one year from the date on which it was opened. (*See paragraphs* 3 *to* 9 *of his letter "Further Papers No.* 4," *page* 30.) With reference to Section XIV, also, Mr. Stainforth observes that he does not perceive why the highest offer mentioned in Section XIV must be equal to the amount due up to the date of sale, when the liability of the purchaser will, under Section XXXII, run from a different date, up to which only, under Section XLIV, the defaulter has claim to rent.

REMARKS.

Mr. Stainforth's fear that the scheme may afford means to annoy a co-sharer is groundless; for with the check of the revenue authorities and the civil courts the abuse apprehended will not easily be practicable.

The power of the co-sharer to obtain reversal of the orders of the collector by suit in the civil court being provided in the Bill, it does not seem necessary to give further summary power to the collector for the reversal of his own order. There ought not indeed to be any summary appeal or review of any order or judgment when such order is subject to reversal by suit in the civil court.

MR. J. H. YOUNG, *Officiating Commissioner of Burdwan.*

Mr. Young is of opinion that the mode of proceeding provided in Section X (of allowing a solvent shareholder, after paying up his own portion of the balance, to open a separate account in the Collector's books and to have all payments made by him on account of his share credited separately) will hardly answer the purpose contemplated; and that it will in practice be found so complicated and cumbrous that it will proba-

bly break down. The proposed Law, it appears to him, unnecessarily mixes up a Butwarrah law with a sale law, and he thinks that it would be preferable to separate the two. But if it be determined to have them both together, he strongly recommends that a limit should be laid down, and that the benefit of separate payments should not be allowed to any shareholder who does not pay at least (say) fifty Rupees per annum. He also thinks that there should be some limit as to the time within which applications for separation of shares should be made, say (in writing) one month before the last day of payment of revenue; and that, in case a sale take place of a share which has been separated, and no bid be offered equal to the amount of arrear, a second period of ten days should not be allowed to the defaulter to pay up his original balance, without breaking in upon the essential principle of the Sale Law and taking a step backwards in legislation. *(See paragraphs 6 to 15 of his letter, " Further Papers No. 4," pages 43 and 44.)*

REMARKS.

Mr. Young objects that the division of jumma belongs to the Butwarrah law and should not be mixed up with a Revenue Sale Law; but the term Butwarrah, strictly speaking, is applied to an actual division of land and not a separation of jumma under certain conditions and responsibility: hence his objection is not applicable.

The question of limitation of fifty Rupees having been noticed in the preceding part of this paper, it requires no further remarks.

His last objection, about allowing a second period of ten days to the defaulter to pay up his original balance, is not justified by the wording of Section XIV, as it is there provided that the estate will be sold unless the *other recorded sharer* purchase, within ten days, the share in arrear, by paying to Government the whole arrear due from such share. Thus it necessarily applies to other than defaulting shareholders.

MR. H. M. REID, *Officiating Collector of Burdwan.*

Mr. Reid observes, with reference to Section XIV, that he does not see why the amount of the bid should be sufficient to cover the amount of the balance. He would empower the collector to sell on any *bonâ fide* bid, how small soever it might be, or by whomsoever (the defaulting sharer alone excepted) it might be made. But he would restrict the collector from receiving a bid from the actual defaulter, unless it exceeded in amount four times the sum due. In this manner twenty-five per cent of the purchase-money would be at once realised from the defaulter, and the Government revenue recovered; and he is aware of nothing in the existing law prohibiting an actual defaulter from bidding for the purchase of his own estate when put up for sale for arrears of Government revenue. In case of any dispute among non-defaulting co-sharers, to whom would be given the option of purchasing the defaulter's share in the event of the latter not being disposed of at the first sale, Mr. Reid thinks that the share should be sold to the highest bidder amongst them. *(See paragraphs 5 to 9 of his letter, " Further Papers No. 4," pages 49 and 50.)*

REMARKS.

Mr. Reid's proposal to allow the share to be sold to the highest bidder without reference to the amount of balance is liable to serious objections. It will oblige Government to realize the deficiency of the balance from other property of the defaulter, which will cause such trouble and difficulty that in most cases the deficiency will never be realised, while the solvent shareholders, by coming to an understanding among themselves, will buy the defaulter's share at the expense of Government at a cheap price.

The second proposal is to allow the defaulter to bid when the bid exceeds four times the sum due as arrear from the estate. This proposal is not only unsupported by any principle, but is not feasible. For if the de-

faulter had the means of making a deposit of his purchase-money equal to the sum due as arrear, he would not have allowed his share to be in default.

The last objection of this gentleman is as to whom the collector shall assign the unsold share, when there is a competition among the solvent sharers. Now no sharer having bid at the first sale of the share, it is not likely that there will be any competition among the sharers. It is, however, left to the discretion of the collector to make over the share to any sharer he may think proper; and it is expected that he, in the exercise of a sound discretion, will give the unsold share to that sharer who has the largest interest in the estate, and agrees to consolidate his new purchase with his old holding. This arrangement will give greater solvency to the share intended to be transferred.

MR. C. STEER, *Officiating Commissioner of Chittagong.*

Mr. Steer observes that, if (as he trusts) the intention of the proposed law is to force co-proprietors to register their names as such, he considers Sections X to XIV well calculated to promote the object in view; though he thinks, if the collector is to be vested with no discretion to refuse an investigation, however complicated, provision ought to be made to authorise him to entertain, at the cost of the parties, any establishment he may require in order to effect any necessary local enquiry. But if it be intended to extend the benefit of the law to non-recorded yet well known proprietors, it should be so declared, and Section XIV should also be modified so as to enable any joint-proprietor, recorded or not, to save the estate from ultimate sale by the payment of the arrear. In either case, however, Mr. Steer thinks that the proposed law will involve an immense immediate and prospective addition of business upon the collector and his establishment. Still, as the aim of the law is so admirable and its justice so undoubted, its provisions should be retained as far as possible. But, to provide against the collector being over-worked by having to investigate difficult cases of disputed rights and interests, he should be allowed to refuse separation and to refer the parties to the civil court for the adjustment of their claims. The decision of the suit might be declared to be summary, subject to modification or alteration by a regular Butwarrah, whenever that might take place. (*See paragraphs 2 to 9 of his letter, "Further Papers No. 4," pages 53 & 54.*)

REMARKS.

Mr. Steer's proposal is that, when the collector shall find an intricate and difficult case of disputed rights and interests he may have power, without deciding the point at issue before him, to refer the parties to the civil court for the disposal of the claim. But if such privilege be granted to the collector, he will, to save himself the trouble, at least, when pressed by business, be inclined to refer most cases to the civil court.

It will not be good policy to extend the privilege to the unrecorded proprietor, as such proprietor can always have his name recorded before submitting his application for opening the account in his name. The system of confining the privilege to the recorded proprietor will induce the unrecorded proprietors or sharers to register their names; and when the system of registry of names is generally adopted, numerous sources of fraud and trouble will be avoided.

SECTIONS X to XIV.—(*continued.*)

Mr. J. S. Spankie, *Officiating Collector of Chittagong.*

Instead of the summary investigation proposed in Section XII, Mr. Spankie would prefer if the Butwarrah laws were revised and rendered more manageable than at present. (*See paragraph* 3 *of his letter, "Further Papers No.* 4," *page* 59.)

Remarks.

The adoption of Mr. Spankie's suggestion to revise the Butwarrah law is not easy. But if the Section about opening separate accounts of shares be adopted, it will in a great many cases avoid the necessity of having recourse to Butwarrah, which, in fact, is an endless pursuit, and, when large estates are in question, is rarely terminated, before half or a quarter of a century has rolled over. The members of the family who commenced the Butwarrah are numbered with the dead, and yet the division of the estate is unfinished.

Whoever is thoroughly acquainted with the nature and quality of our land-tenures and the soil, and refers to the requisitions of Regulation XIX. of 1814, will at once admit that to make an equal Butwarrah is nearly impracticable; while the proposed measure of the Bill, if adopted, will be in some manner a substitute for a Butwarrah, and thereby give at least partial relief to the co-sharer.

Mr. R. N. Shore, *Collector of Cuttack.*

Mr. Shore urges some objections to the provisions in Sections X to XIV, whereby shareholders of joint undivided estates will be enabled to pay the revenue on their shares separately, and so to secure them from sale, except in the double contingency of one or more of the other shares failing, when exposed to auction, to realise the full amount of the arrears due upon them, and of these arrears not being made good within ten days of the sale by the solvent shareholders. He considers that these provisions will encourage the sub-division of property and the multiplication of petty estates, already a serious and growing evil in this country; and he would therefore limit their operation, as was done by the now rescinded Regulation VI. 1807, to those shares whose sudder jumma should be not less than five hundred Rupees. (*See paragraph* 3 *of his letter, "Further Papers No.* 4," *page* 82.)

Remarks.

Mr. Shore states that, if the provisions of these sections be adopted, it will multiply the sub-division of estates and increase the number of the accounts: he proposes, therefore, to limit the opening of accounts to the sharer who pays a revenue of five hundred Rupees for his share per annum.

This is a suggestion in fact for the revival of Regulation VI. of 1807, which the legislators—finding that the restriction therein contained for the partition of small estates had been the cause of considerable injury to numbers of individual sharers in such estates, thereby inducing a sacrifice of private rights which the degree of public inconvenience arising from the minute division of landed property does not appear to be of sufficient magnitude to justify or require—found it necessary to repeal by Regulation V. of 1810, or only three years after the passing of the restrictive law of 1807. Nothing new is now urged to justify the adoption of the repealed measure.

Mr. Samuells, *Commissioner of Cuttack.*

Mr. Samuells, however, observes that, if these Sections were likely to lead, as Mr. Shore supposes, to the further sub-division of petty estates, he should join with him in deprecating their introduction, as

tending materially to increase the risk and labor of collecting the revenue, and as prejudicial to the people and the prosperity of the country. But Mr. Samuells believes that the operation of these provisions will in all probability be the very reverse of that anticipated by Mr. Shore; that the remedy they contain against the fraud or negligence of co-sharers will in a great measure put a stop to the partition of estates; and that this remedy will give the shareholders of joint undivided estates confidence and security in that description of property, and will render a formal partition of the estate under the Butwarrah law unnecessary for their protection. Mr. Samuells considers it a great mistake to suppose, as many persons appear to do, that there is little difference between an actual partition as effected under Regulation XIX. 1814, and the power which this Bill allows to sharers in undivided estates of protecting their own shares by the separate payment of their share of the revenue of the estate. In the first place, according to the proposed plan, the whole estate continues answerable for the revenue assessed upon any portion of it; and in the next, the estate has the benefit of the joint funds of a number of individuals employing, generally speaking, a single manager, and retains an area sufficiently large to encourage the application of capital, instead of being split up, as it would be if partitioned, into a variety of little unremunerative patches, each with a separate management and dependent for improvement on the resources of a single individual. In conclusion, Mr. Samuells observes that he considers the principle involved in the Sections in question to be worthy of adoption, and the details appear to him to be unobjectionable.

REMARK.

Mr. Samuells has refuted the objection of Mr. Shore, and strongly supports the scheme proposed in the Bill.

MR. A. GROTE, *Officiating Commissioner of Nuddea.*

Mr. Grote also approves of Sections X to XIV; but he thinks it will be necessary to empower a collector to close a separate account as well as to open one, or to revise a demand previously entered against a sharer. *(For his reasons, see paras: 4 to 8 of his letter "Further Papers No. 4," pages 84 and 85.)*

REMARKS.

Mr. Grote suggests that power be given to the collector to close a separate account or revise the demand previously entered againt a sharer. If such power be granted, the exercise of it should be limited under the sanction of superior authority, as provided for in case of review of judgment of the civil courts; otherwise the confidence of the landholders in the scheme in question will be very much diminished.

MR. E. H. LUSHINGTON, *Officiating Collector of Nuddea.*

Mr. Lushington observes that, as the practice of registering the names of proprietors is not general, serious injustice might be committed if no objections be admissible except from recorded proprietors; but, if it is intended to enforce registration, ample time should be allowed to all parties.

REMARKS.

Mr. Lushington suggests the extension of the period of registry; but as the Bill does not limit the period, registry may be effected at any time the party may choose to apply for it.

SECTIONS X to XIV.—*(continued.)*

MR. F. A. LUSHINGTON, *Collector of the 24-Pergunnahs.*

Mr. F. A. Lushington considers that sections X to XIV, although they will involve increase to the Native establishments, will entirely neutralise the effect of the chicanery and deceptions often practised by rich shareholders becoming possessed of the shares of poorer shareholders, by suffering their own shares to fall into arrears and thus purchasing the whole estate *benamee*, when it is put up for sale. Mr. Lushington also thinks it would be well to define whether or not Schedule B is intended to interfere with such portions of Regulation XV. 1797, as define the amount of fees to be levied for the registration of transfers.

REMARKS.

Mr. F. A. Lushington, after giving his reasons for approving the scheme, suggests that it be stated whether the fee realisable under these sections does supersede the recovery of the fee claimable under Regulation XV. of 1797. As the fee levied under the provision of the last mentioned law is for the registration of transfers, which will continue to be charged as heretofore, it has no connection with the opening of separate accounts of a sharer of an estate, which must be subject to the payment of a fresh fee on every occasion.

MR. R. F. HODGSON, *Collector of Behar.*

Mr. Hodgson does not see the necessity for a law which will enable a shareholder to pay in his rent separately, but will *not* preserve his share from sale. Such a law, in his opinion, will only create and accumulate work without effecting any thing that the laws in force could not with greater security convey. Besides, the law, he thinks, will be hardly applicable to Behar, where the *bhowlee* system generally prevails, that is, where estates held in common tenancy consist not of shares in the land, but in the produce, and payments are made in produce instead of money. He is not aware of any case of shareholders in an estate in that zillah possessing defined and distinct portions of land; but should any such instance exist, the question of separation, he conceives, could be more satisfactorily settled by the Butwarrah than by the proposed law. The matter of possession to be enquired into by the collector under Section XII, also, is not easily susceptible of proof, as nothing could be more untrustworthy or unsatisfactory than the evidence of those who would be examined, the consequence of which, in ninety cases out of a hundred, there would be litigation, appeals to higher authority, and an indefinite and unnecessary increase of labor to both offices. Lastly Sections XIII and XIV appear to him to be opposed to the provisions contained in the preceding clauses, for cases will occur where the highest offer for the *ijmali* share exposed to sale does not cover the amount of arrear due thereon; and a shareholder who has under Section X or XI obtained the privilege of opening a separate account, and who has under Section XLVIII been heavily mulcted to secure the said privilege, will find that, through no fault of his own, neither the regularity with which he has scrupulously paid in his share of the Government revenue, nor the fees which he has paid under Schedule B, in any way absolve or exonerate him from the calamity into which the entire estate has been plunged by the neglect (wilful or unavoidable) on the part of the *ijmali* shareholders. *(See paragraphs* 6 *to* 10 *of his letter, "Further Papers No.* 4,*" pages* 102 *and* 103).

REMARKS.

Mr. Hodgson considers the provisions of these sections not applicable to Behar, where estates are generally held in common tenancy; the shares not being in the land but in the produce, and payments being made by under-tenants and cultivators in produce according to the respective shares of the *maliks.*

Notwithstanding such a relation between the parties, they are yet holders of definite shares—the payment being

in kind or money makes no difference in the amount of their respective shares. The principle of *caveat emptor* will apply to the purchaser of such a share as much as to the purchaser of a share in joint tenancy.

Admitting that the provisions of these Sections cannot be applied to the Province of Behar, the collector can at all times decline to comply with the application of an individual for opening a separate account, and for that purpose power may be given by law to the collector (*vide* remark on Section XII); the provisions in question will in consequence remain a dead letter in that Province; and as they do not repeal any existing law, they cannot do any injury to the landholders of Behar.

Mr. Hodgson's next objection to the scheme (Sections XIII and XIV) is that it is wrong in principle, as an honest sharer, having done all that the law requires of him, may yet be a great sufferer by the fraud and chicanery of his defaulting co-sharer. It is sufficient to observe that such honest sharer knew, when he had done all that the law requires of him, what protection he would get by such act; hence there is no ground of complaint.

Indigo Planters' Association.

In the extracts from correspondence annexed to the petition of the Indigo Planters' Association, the following remarks and suggestions with regard to the sections under review appear:—

Mr. Strachan thinks that the labor imposed on the several authorities to carry out the requisite summary enquiries to enable them to open separate accounts, will be so great that he fears frivolous and vexatious objections will be too readily admitted and allowed weight and many applications hastily rejected; and that it is, therefore, necessary to prescribe some definite rules respecting the nature of the objections which will be cognizable. He also thinks that three months' notice should be allowed for objections to be entered and attended to, and that less than that time would be positively injurious.

Mr. Tierry is of opinion that the Bill stops short of the absolute protection that should be allowed to solvent co-sharers of estates, one of whom may not have the means of purchasing the whole estate by paying up the entire revenue, and his joint shareholder knowing such and wishing to obtain the whole estate, purposely fails to pay his share and subsequently obtains his end by purchasing the whole estate *benamee*.

Mr. Cave thinks that the division of an estate will not on trial be found so easy as it is imagined; that it will cause immense trouble and expense to all parties concerned, will ruin many and will create no end of confusion to the Government revenue; and that the boundaries of the different portions of an estate have so worked themselves up together that, to divide them so as to safely render them independent of each other and of the parent estate and at the same time to secure the Government revenue, would require a very careful and expensive survey of the whole estate—a process which in a large estate would require many years.

Remarks.

Mr. Strachan, an Indigo Planter, suggests that certain definite rules respecting the nature of the objections to be enquired into, be laid down, and that the time for filing such objections be extended to three months.

As it is provided in Section XII that admission or rejection of an application for opening a separate account is subject to appeal to the higher revenue authorities and the order thereon to reversal by a regular suit, it is not probable that the collector will, on any frivolous and vexatious objection, hastily reject applications. The six weeks' time is ample for filing objections in a summary suit: the more time is given, the more the suitors desire to have.

SECTIONS X to XIV.—(*continued.*)

Considering that the safety of the public revenue is a main point in the scheme, Mr. Tierry's suggestion for additional security to registered solvent sharers is not tenable.

Mr. Cave's objections to, and remarks on, the present system of Butwarrah, are irrelevant to the question at issue.

MR. G. U. YULE, *Commissioner of Bhaugulpore.*

Mr. Yule observes that these Sections will, if a limit is fixed, confer a great boon on shareholders; but that, if extended to those paying small sums, and if the collector is to institute a summary enquiry into possession, they will be productive of far more harm than good; as enormous establishments would be required to keep the accounts, the proprietors would constantly be harassed by parties claiming to have their names recorded as separate shareholders, and consequent enquiries into possession, and butwarrahs, already far too numerous in some districts, would become enormously increased. Mr. Yule would confine these Sections to parties already recorded or who may hereafter be recorded in the usual way, and the amount of whose revenue is over one hundred Rupees.

REMARK.

Mr. Yule proposes to confine the provisions for the separation of shares to estates paying revenue of one hundred Rupees or more, which is objectionable in principle and practice, as already noticed.

MR. W. TAYLER, *Commissioner of Patna.*

Mr. Tayler fully concurs in the arguments of the Lieutenant Governor of Bengal, for confining at present the operation of these Sections to estates paying fifty Rupees. Mr. Tayler urges that the concession now proposed is one of privilege and not of right; that the Government has indisputable right to limit that privilege as it deems proper; and that the wisdom of trying the law on what the Lieutenant Governor calls "manageable terms" cannot be doubted.

REMARK.

Mr. Tayler adopts in an unqualified manner the suggestion of the Lieutenant Governor of Bengal on this subject, which has already been noticed. But he overlooks the fact that Butwarrah is a right, and that it is the object of the Bill, not to confer a privilege, but to facilitate the enjoyment of that right, with comparatively greater convenience to the public officers.

MR. F. GOULDSBURY, *Commissioner of Rajshahye.*

Mr. Gouldsbury, however, can see no valid reason for exempting shareholders under fifty Rupees from a participation in the benefits proposed to be conferred on the whole body of landed proprietors, because (as remarked by Mr. Grant) the object is to confirm the just rights of the sharer by securing his property when there is no default on his part; and a share paying forty Rupees may be of as much concern to the owner as are estates paying forty lacs, to the Rajah of Burdwan. Mr. Gouldsbury apprehends that the shareholders under fifty Rupees constitute a much more numerous body than the shareholders above that limit; so that, by admitting the latter only to the benefits of the law, we should be excluding the majority of the proprietary body from what all have an equal claim to, besides laying ourselves open to the imputation of legislating for the rich and not for the poor.

SECTIONS X to XIV.—(*continued.*)

REMARKS.

Mr. Gouldsbury approves without qualifications the scheme of the Bill, and sets forth his reasons for the same.

MR. C. STEER, *Commissioner of Chittagong.*

Mr. Steer observes that no one contends that the registration of separate shares will be unattended with the effect of throwing a vast amount of extra labor upon the collectors and their establishments. But the principle of the proposed measure is so just that it ought to be conceded if possible to all alike. The fees for registration would lessen the increased expense, which is now regarded as an obstacle to the introduction of a measure of such wide utility as that contemplated by the proposed Law. To encourage and extend a "pauper proprietary" (Mr. Steer observes) is certainly objectionable; but can that be helped, he asks, and is it certain that the new law will have that effect? On the contrary, he thinks that, notwithstanding it may seem to encourage the subdivision of estates to admit each sharer to the privilege of a separate proprietor, this effect will be in a great measure counteracted by the other contemplated provisions of the proposed Act; and that there is reason to suppose that the subdivision of estates into small shares among poor proprietors will be rather checked than otherwise by the operation of the new law. (*See paragraphs* 5 *and* 6 *of Mr. Steer's letter, printed at pages* 10 *and* 11 *of* "*Further Papers, No.* 9.")

REMARK.

Mr. Steer likewise supports the scheme and gives his reasons for so doing.

MR. F. GOULDSBURY, *Commissioner of Rajshahye, and* MR. W. TAYLER, *Commissioner of Patna.*

Mr. Gouldsbury and Mr. Tayler concur with the Lieutenant Governor of Bengal in the expediency of dispensing with the summary enquiry into the fact of possession. The former observes that, by restricting the benefit of the Bill to recorded shareholders, sufficient evidence will be ensured of the fact of possession, which must, under the existing rules regarding *dhakil kharij,* have been ascertained before the name of the shareholder was recorded; and that a second enquiry on this point would only tend to open a door to fresh litigation, besides giving unnecessary trouble to the collector; and he would allow the privilege of opening a separate account to those co-partners only whose names have been recorded in the collector's office *with a specification of their shares,* without which an enquiry on the point would be requisite before admitting a sharer to the benefit of the Bill. In such cases (Mr. Gouldsbury adds) there is generally a dispute among the shareholders as to the extent of each person's share, and it is the province of the civil courts, and not of the revenue authorities, to decide such disputes.

Mr. Steer (Commissioner of Chittagong) also considers that it would be the most advisable course to empower the collector to refuse registration and to refer the parties to the civil court for the determination of the matter.

REMARKS.

Messrs. Gouldsbury and Tayler concur with the Lieutenant Governor of Bengal on the expediency of dispensing with the summary enquiry into the fact of possession. The subject having already been noticed, it requires no further comment.

SECTIONS X to XIV.—*(continued.)*

MR. B. J. COLVIN, *Judge of the Sudder Court, Lower Provinces.*

Mr. Colvin has nothing to oppose to the repeal of Regulation X. 1818, although he doubts whether, had he continued a revenue officer in Cuttack, he should have advocated it. While he doubts also the policy of the provision allowing co-sharers to open separate accounts, as tending to foster and encourage disputes and to lead to indiscriminate subdivisions, he agrees with the Lieutenant Governor of Bengal that the proposal confers a boon for which Government is entitled to an enhanced jumma of one-tenth rather than the levy of fees as per scale in Schedule B. He concurs also with the Lieutenant Governor in recommending the omission from Section XII of the direction to the collector to institute a summary enquiry into the fact of possession.

REMARKS.

Mr. Colvin approves of all the objections and remarks made by the Lieutenant Governor of Bengal to the several important schemes proposed in the new Bill. It is not necessary to repeat those observations and the explanations which were offered in regard to His Honor's minute.

MR. A. SCONCE, *Judge of the Sudder Court, Lower Provinces.*

Mr. Sconce proposes the omission of Sections X to XII and all that follow in connection with them. *(For his reasons, see paragraphs* 1 *to* 9 *of his minute).*

REMARKS.

Mr. Sconce proposes to omit Sections X, XI, and XII, and all that follow in connection with them, on the following grounds.

1st. The project more directly belongs to the simplification of the Butwarrah law or Regulation XIX. of 1814, and not to a Revenue Sale Law.

2nd. The application and objection thereto having been limited to a recorded sharer, the exclusion of the unrecorded proprietor will deny a hearing to men best qualified to expose, and most interested in exposing, the false or erroneous pretensions of the applicant.

3rd. It it not clear whether the purchaser of a recorded share will obtain by such purchase the mere right, title, and interest of the recorded sharer, or the specific portion of the estate covered by the specific jumma, wherever it may be found, and by whomsoever, and for however long it may have been in the possession of third parties.

4th. Mr. Sconce, in paragraph 9 of his minute, admits that "we have all in our time more or less blushed at the inefficient operation of the Butwarrah law, Regulation XIX. of 1814. Let that law be simplified and amended."

Now, whatever amendment or simplification may be made in that law, if the principle of it be strictly adhered to, as it must be, the Butwarrah will always be an "inefficient operation." Look at the requisitions which the existing law very properly makes, namely, each division of an estate to be as compact as possible, and, in selecting the mehals or villages to be included in each separate estate, the advantage or disadvantage arising from situation, the vicinity of roads or navigable rivers, the nature and quality of the soil and produce, the quantity of waste land, the depth at which water may be procurable, the number of tanks, the state of embankments and wa-

ter-courses, and every other local circumstance affecting the present or likely to influence the future value of the land, are to be duly considered, and the mehals or villages to be included in each estate fairly and impartially selected accordingly (Section VIII, Regulation XIX. 1814).

Now, if these requisitions be complied with, and without which no selection of lands can be said to be fairly and impartially made, the operation from its very nature will necessarily occupy a number of years: and in proportion to the extent of the property, the nature of its position and admixture of its lands (*peetulgolah*) with those of other estates, and the number of claims to hold tenures either rent-free or on *mokureree jummas*, to be decided by the revenue authorities, will be the delay in completing the Butwarrah; and in the same ratio will be the expenses of every sort, whether legitimate or otherwise, the annoyance, injury, and other evils.

The fact is that, if the scheme of the Bill is adopted, the proprietors will in many cases deem it unnecessary to have recourse to the Butwarrah law. Though the scheme may not give protection well and thoroughly, and though the protection may in some cases be incomplete or even nugatory, yet the partial relief that will be afforded will be a blessing to the Bengal Province, especially when it is considered that the day for a well-matured Butwarrah law (framed with reference to the provisions hereinbefore noticed, which it will be necessary to include therein), is so distant as to be almost beyond expectation. It is advisable, too, to give effect to this scheme, that its practical operation may afford some experience for better legislation at a future day, instead of denying the country this benefit and waiting for an unlimited time to gain some problematic advantage. The subject of a Butwarrah is thorned with so many difficulties, that few officers have yet been able to draw out a practical scheme. It is easier to point out the defects of an institution than suggest remedies for their cure.

OBSERVATIONS UPON SECTIONS XV and XVI.

Deposit for the protection of an estate from sale.

" XV. If any recorded proprietor or co-partner of an estate shall deposit with the Collector money, or Government Securities endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the jumma of the entire estate, and authorizing the Collector to apply to the payment of any arrear of Revenue that may become due from that estate the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of Revenue due from the said estate not being paid before sunset of the latest day of payment fixed under Section III or Section IV of this Act, the Collector shall apply to the payment of such arrear the said money or securities, or such part thereof or of any interest due on the said securities as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands, and any interest that may be due upon such securities. And so long as any money or securities as aforesaid shall remain and be available as aforesaid, the estate for the protection of which the said deposit was made shall be exempted from sale for arrears of Revenue."

Withdrawal of the deposit.

" XVI. It shall be competent to the person making a deposit under the provision of the last preceding Section, or his representative or assignee, at any time to withdraw the deposit, and to revoke the pledge of the same; and from the date of such withdrawal and revocation the estate shall be subject to the ordinary rules relating to sales for arrears of Revenue."

Mr. C. C. Jackson, *Junior Member of the Board of Revenue, North Western Provinces.*

Mr. Jackson considers Section XV an abortive attempt to give security to landed property by a partial redemption of the taxes to which it is liable, while it is in reality nothing more than forestalling the Government demands at a considerable sacrifice to the party who avails himself of the privilege. *(See penultimate paragraph of his minute, " Further Papers No. 1," page 5.)*

Remarks.

Mr. Jackson has not clearly understood the intent and purpose of these Sections; nor can the starving peasantry of the North-Western Provinces, now reduced to the bonded slavery of the village bankers, ever avail themselves of the provisions thereof.

SECTIONS XV and XVI.—(*continued.*)

LIEUTENANT GOVERNOR OF BENGAL.

The Lieutenant Governor of Bengal thinks that this provision may prove valuable and useful to absent zemindars unable to find trustworthy agents, but he doubts whether it be a real affair of the Government to transact agency of this kind. It might (like the Government agency now about to be abolished) tend to raise the value of Government securities, but he doubts whether it will after all be made much use of. If it should, it would seem as reasonable in this case as in the case of the Government agency to empower the collector to charge agency-commission for drawing and applying interest on securities the private property of individuals. On the whole, however, His Honor is not in favor of this provision, and he observes that the Government can now permit a zemindar to deposit cash or paper when it may think fit in peculiar cases (as was done in the case of the late Dwarkanauth Tagore), but he doubts the expediency of forcing the Government to do so in all cases.

REMARKS.

The Lieutenant Governor of Bengal thinks that it is not an affair of Government to transact agency of the kind, and questions whether the collector should not be allowed to charge agency-commission for drawing and applying interest on securities deposited by private individuals. On the whole, he is not in favor of the deposit scheme, while on the other hand nearly the whole of the Revenue Officers support it.

The objection does not appear to be based on any sound principle, while the numerous advantages that will accrue both to Government and the landholders, if the scheme be adopted, are entirely overlooked.

By the present practice of the General Treasury, any holder of public securities may obtain a special order on any collector in the mofussil for payment of the interest, as it shall accrue, on Company's paper. Here the case is nearly the same. Under the practice, the collector pays the interest in *cash* to a private individual. Instead of paying it in cash, he will apply the same by transfer in payment of arrears of revenue under the provision of a special agreement entered into by the depositor by sanction of a law.

Under the former system he is employed to render investment in the public securities desirable. Under the latter he will be employed to secure an object not less important, and more immediately within the duties of his office—the realization of the land revenue.

MR. H. RICKETTS, *Member of the Board of Revenue, Lower Provinces.*

Mr. Ricketts has made the following remarks on Section XV :—

"I can see no objections to the provisions of this Section. It certainly provides for redemption of the land-tax; and, in the manner proposed, I see no reason why the tax should not be redeemed. It is not probable that many will take advantage of the rule, and if it were probable, still I would have the rule. It is not intended to decrease the resources of posterity; while the redemption will have the effect in promoting improvement of a complete exemption from all liability to the state, the resources of posterity will be in no way affected by the transaction. The existence of the debt and the necessity for paying the interest thereof are facts. The transaction will be equivalent to redemption of the land-tax for a money payment at twenty-five years' purchase, and the immediate application of the money to the liquidation of so much of the debt: supposing the debt to be extinguished by redemption, or in other words supposing all the public securities in existence to be deposited under the Act, I do not see how posterity could suffer. There would be less land revenue to receive, but there would be no interest to pay. I do not see but that the condition of the country would be improved in many respects. Imagine

Bengal with no collectors' offices, no last days of payment with all their griefs and anxieties, no settlements with unfortunate over-assessments, no turning out escorts for treasure at unreasonable times, all the cost of collectors' and deputy collectors' establishments, guards, &c. saved and laid out in improving the courts and the police. I can see no object in the land-tax except to meet state expenditure. Unless it be denied that the landed interest would prosper more without the tax than with, its payment of debt by redemption of tax would be advantageous."

MR. J. DUNBAR and MR. W. DAMPIER, *Members of the Board of Revenue, Lower Provinces.*

Messrs. Dunbar and Dampier entirely approve of Sections XV and XVI. The former adds that they will give encouragement to English capitalists to invest money in the purchase of land in this country, and the latter expresses a hope that extensive use may be made of their provisions.

MR. A. GROTE, *Officiating Commissioner of Nuddea.*

Mr. Grote observes, with reference to Sections XV and XVI, that very few landholders will have the means of availing themselves of the privilege which these provisions confer; and he considers it unnecessary, therefore, to argue on the financial results which would follow the making of deposits by landholders generally, or by a large proportion of them.

Messrs. E. H. and F. A. Lushington, R. F. Hodgson, F. A. E. Dalrymple, and E. C. Craster approve of the above Sections. *(See paragraphs* 8 *to* 11 *of Mr. Craster's letter, " Furthers Papers No.* 4," *pages* 112 *and* 113.)

MR. J. S. SPANKIE, *Officiating Collector of Chittagong.*

Mr. Spankie considers that the above provision is a just one, and that, whether it be used as a means of converting estates into freehold tenures, or merely to avert the consequence of a co-parcener's bad faith or an agent's dishonesty, the result cannot fail to be beneficial.

MR. E. A. SAMUELLS, *Commissioner of Cuttack.*

Mr. Samuells can conceive no objection to the permission given to landholders, by Sections XV and XVI, to secure their estates from sale by depositing with the collector money or Government securities equal in amount to the sudder jumma of their property—a permission which, it has been said, may lead to the redemption or condemnation of the land-tax. But (adds Mr. Samuells) as Mr. Shore, collector of Cuttack, has pointed out, this cannot be until the interest on the public debt equals the land-tax, and Government renounces the power of paying off the loans which they contract.

MR. H. V. SCHALCH, *Officiating Collector of Balasore.*

Mr. Schalch observes that Section XV appears to confine the privilege therein given for the protection of an estate, by a deposit to cover an arrear that may accrue on it, to the whole estate, and not to shares of an estate for which separate accounts may have been opened under Sections X to XIII. He sees no reason why this concession should not be extended to co-partners of such shares; any deposits made by them, however, not to protect the shares, if the whole estate become liable to sale under the provisions of Section XIV.

MR. G. U. YULE, *Commissioner of Bhaugulpore.*

Mr. Yule is not aware of any serious objection to this Section (XV), as it probably will not be extensively worked.

SECTIONS XV and XVI.—*(continued.)*

MR. F. GOULDSBURY, *Commissioner of Rajshahye*, and MR. C. STEER, *Commissioner of Chittagong.*

Mr. Gouldsbury and Mr. Steer see no objection to the Lieutenant Governor of Bengal's suggestion of empowering the collector to charge an agency-commission on drawing and applying interest of Government securities deposited with him. But they would not deprive the zemindars of the power, which it is proposed to confer upon them, of making such deposits, which would unquestionably be a great boon and protection to absentee landholders. Mr. Steer observes, with reference to the case of the Calcutta Government Agency, that one of the grounds for its abolition probably was that in Calcutta no such institution was necessary. But in the mofussil, the public are not so independent, owing to the dishonesty of mofussil native agents and to the want of mofussil public agencies capable of looking after the interests of absent constituents; and Mr. Steer is at a loss to understand why a Government should shrink (so long as no undue means are used) from a measure, the effect of which will be to raise the value of its own securities.

REMARKS.

The following gentlemen are without qualification in favor of the scheme, and the reasons they respectively adduce do not require any comment.

Mr. Ricketts,	Mr. Hodgson,	Mr. Schalch,
„ Dunbar,	„ E. Dalrymple,	„ Simson,
„ Dampier,	„ Craster,	„ Yule,
„ Grote,	„ Spankie,	„ Gouldsbury,
„ F. Lushington,	„ Samuells,	„ Steer.
„ E. Lushington,		

MR. J. H. YOUNG, *Commissioner of Burdwan.*

Mr. Young observes that this measure will be looked upon as a very great boon by all proprietors of land, and that its advantages are so self-evident that it seems strange it should never have struck any one before. He would, however, allow a discretion to the collector to reject such applications whenever he thinks fit; otherwise landholders will be depositing Government securities with the collector, not for the purposes contemplated by the law, but some of them for security's sake, and others with the view, merely, of getting rid of the trouble of drawing the interest themselves.

REMARKS.

Mr. Young, though in favor of the scheme, proposes to give power to the collector to reject such application whenever he thinks fit, but the reasons he states for giving such power are rather imaginary than otherwise.

MR. C. STEER, *Officiating Commissioner of Chittagong.*

Mr. Steer, in referring to Section XV, thinks that it may be asked whether it is the object of the legislature to afford to landholders the means of purchasing the redemption of the land-tax; as if so (instead of a deposit of a public security bearing interest, the rate of which is subject to fluctuation), a specific sum, in lieu of the tax, should be fixed as the price of redemption—say a sum equal to twenty years' purchase. At this rate (Mr. Steer observes) there can be little doubt that the privilege would only rarely be taken advantage of; but there may be

estates so lightly assessed, or the property involved in the estate may be so valuable, or the condition of the party desiring redemption may be so peculiar, that the purchase amount would be as nothing compared with the benefit to be gained by the possession of a rent-free tenure in perpetuity. If a deposit (Mr. Steer adds) is proposed only as a temporary security against sale, it should be at the option of the party desiring such security, to make it; and if the principle of compounding for the land-tax is not one opposed to the stability and well-being of the state, the means of effecting it should be rendered as easy as the nature of the transaction will admit.

REMARKS.

Mr. Steer's enquiry as to the motive of the legislature, whether they desire to afford to landholders the means of purchasing the redemption of the land-tax, is irrelevant to the point now under consideration. The proposed measure is intended simply to afford security to the landholders against fraud of their agents, chicanery of their co-sharers, and dissipation or unguarded omissions by themselves and their descendants.

MR. F. B. SIMSON, *Officiating Deputy Collector of Bulloöah.*

Mr. Simson remarks, with reference to Sections XV and XVI, that the deposits may be made long before sale is probable, in which case attachments by order of the civil courts may be received by the collector and occasion difficulty. These Sections, therefore, seem to him scarcely complete without some reference to the above contingency.

REMARKS.

Mr. Simson's doubt will vanish when it is stated that, by the terms of the agreement under which the deposit is to be made by way of future security, the paper itself is to be duly endorsed and specially made payable to the collector as provided for in Section XV of the Bill, and thus the entire legal interest in the paper from that moment becomes vested in the collector. The civil court's process under such circumstances cannot for any private debt of the proprietor seize or attach the paper so deposited by him.

MR. B. J. COLVIN, *Judge of the Sudder Court, Lower Provinces.*

Mr. Colvin sees no objection to permitting the deposit of money or Government securities with the collectors, but he would institute an agency commission fee leviable by the collectors.

REMARKS.

Mr. Colvin approves of all the objections and remarks made by the Lieutenant Governor of Bengal to the several important schemes proposed in the new Bill. It is not necessary to repeat those observations and the explanations which were offered in regard to His Honor's minute.

MR. A. SCONCE, *Judge of the Sudder Court, Lower Provinces.*

Mr. Sconce proposes the introduction of a provision in Section XV for the sale of securities deposited and for the deduction of the margin. Perhaps the Bank of Bengal, he observes, should be employed to sell the securi-

ties, and its last published margin should at the risk of the zemindar be adopted as the margin to be allowed (pending sale of the securities) in the collector's accounts.

REMARKS.

The suggestion contained in paragraph 10 is to make a provision for the sale of securities deposited; but as the securities are to be duly endorsed over to the collector with an agreement containing all requisite terms, it is unnecessary to include any provision of the kind in the law. The law should not be burdened with details which will only perplex the parties who will have to deal with it. Moreover, as the Bank of Bengal is now authorised by law to undertake the duties which formerly devolved on the Government Agent, no difficulties need be apprehended.

OBSERVATIONS UPON SECTION XVII.

Estates under Court of Wards or attachment.

"XVII. No estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards; and no estate the sole property of a minor or minors, and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation VI. 1822, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them, shall have attained the full age of eighteen years. And no estate held under attachment by the revenue authorities otherwise than by order of a judicial authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no estate held under attachment by a Revenue Officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment, until after the end of the year in which such arrears accrued."

MR. J. DUNBAR, *Member of the Board of Revenue, Lower Provinces.*

Mr. Dunbar concurs in the propriety of the protection given to estates under the management of the court of wards; but he is disposed to doubt whether the privilege proposed to be conferred on minors, of whose property the court of wards has not assumed the management under the provisions of Regulation VI. 1822, is necessary. Assumption of such management, Mr. Dunbar thinks, should be the rule, and exception should be given only under circumstances which render interference unnecessary and avoidable, due security however, being taken for the payment of the Government revenue. Mr. Dunbar adds that irreparable injury might frequently be done to a minor by allowing the revenue of his estate to remain outstanding during the whole period of his minority; and that estates of which the court of wards do not take charge under Regulation VI. 1822, are usually insignificant and of little profit, and the balances accruing under a minority might sometimes be much more than the property would fetch.

REMARKS.

This Section is a re-enactment, and therefore Mr. Dunbar's objection is in fact applicable to the old law as much as to the proposed one.

The remedy for the abuse, as pointed out by Mr. Dampier, fully meets the objection.

MR. W. DAMPIER, *Member of the Board of Revenue, Lower Provinces.*

Mr. Dampier thinks it might be advisable to adhere to the provisions of Section IV, Regulation VI. 1822, as, under the proposed enactment, an accumulation of interest might accrue to the ruin of the minor on his coming of age.

OBSERVATIONS UPON SECTION XVIII.

"XVIII. It shall be competent to the Collector, at any time before the sale of an estate shall have commenced, to exempt such estate from sale; and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate shall have commenced, to exempt such estate from sale by a special order to the Collector to that effect in each case; and no sale of an estate shall be legal if held after the receipt of an order of exemption in respect to such estate. Provided, however, and it is hereby enacted, that the Collector or Commissioner shall duly record in a proceeding the reason for granting such exemption; and provided also, that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector of the order for exempting it from sale."

Estates may be specially exempted from sale

Proviso.

MR. R. F. HODGSON, *Collector of Behar.*

Mr. Hodgson considers that this Section has a tendency to make landholders procrastinate, instead of their being made to regard the quarterly day of payment as the real arbiter of their fate. If the rule remains undefined, an immense latitude will be left to the arbitrary will of the collector; whereas there can be no hardship when every man knows beforehand that he has three months to collect and pay in his rent. But he would allow an appeal to the commissioner with power to grant exemption in special cases on sufficient reasons being assigned. (*See paragraph* 12 *of his letter, " Further papers, No.* 4," *page* 104.)

REMARKS.

This Section is also a re-enactment of the old law. Mr. Hodgson's objection may be obviated by a rule of practice, or, if necessary, by being embodied in this Section, as by the existing law it is required " that the collector or commissioner shall duly record in a proceeding the reasons for granting such exemption," and here it may be added: " provided such proceeding be forwarded by the collector to the commissioner; and whenever the commissioner shall grant such exemption the proceeding regarding it shall be sent by the commissioner to the revenue board." Thus each successive superior office will be able to control or check any improper exercise of discretion by its immediate subordinate.

OBSERVATIONS UPON SECTIONS XIX to XXII.

"XIX. Sales shall ordinarily be made by the Collector in the land revenue cutcherry at the Sudder station of the district; provided, however, that it shall be competent to the Board of Revenue to prescribe a place for holding sales other than such cutcherry whenever they shall consider it beneficial to the parties concerned"

Sales where to be made.

"XX. In case the Collector shall be unable from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by a written proclamation stuck up in his cutcherry; and so on, from day to day, until he shall be able to commence upon, or to complete the sale: but, with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid."

Adjournment of sales.

"XXI. On the day of sale fixed according to Section VI of this Act sales shall proceed in regular order; the estate to be sold bearing the lowest number on the towjee or register in use in the Collector's Office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other Officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so on default of deposit, as provided in Section XXII of this Act."

Order of selling.

"XXII. The party who shall be declared the purchaser of an estate at any such public sale as aforesaid, shall be required to deposit immediately, or as soon after the conclusion of the sale of the estate as the Collector may think necessary, either in cash, Bank of Bengal Notes or Post Bills, or Government Securities duly indorsed, 25 per cent. on the amount of his bid, and in default of such deposit the estate shall forthwith be put again and sold."

Deposit on account of purchase-money.

SECTIONS XIX to XXII.—(*continued.*)

These Sections are a re-enactment of portions of Act I. of 1845.

MR. A. SCONCE, *Judge of the Sudder Court, Lower Provinces.*

Mr. Sconce would omit Section XXI. The mehals sold, he says, are too few to make it important; and an immaterial deviation from the sale roll would render the sale invalid. The same end would be fully attained by a circular order of the board of revenue; while Section XXV would amply provide for material informalities of this kind.

REMARKS.

The provision of Section XXI for the sale of estates in regular order, that bearing the lowest number on the *Towjee* in use being put up *first* and so on, was introduced into Act XII. of 1841 for the first time by the Honorable Mr. Robertson, then President of the Supreme Council, with reference to the injustice done in the sale of the Midnapore estate; and it being a good safeguard against the abuse of power, there exists no reason for omitting this Section, now re-enacted in the Bill. Besides, to rely on the power of the revenue commissioner for the annulment of sales in special cases under the sanction of the board and the local government, is to abridge the power of the civil court to annul a sale for any such irregularity as is contemplated by Section XXI.

OBSERVATIONS UPON SECTION XXIII.

"XXIII. The full amount of purchase-money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth: and in default of payment within the prescribed period as aforesaid, then and afterwards as often as such default shall occur, the deposit shall be forfeited to Government, the estate shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate, or to any part of the sum for which it may subsequently be sold, and in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of Public Revenue, and it shall be so levied and credited to the defaulting proprietor of the estate sold; and if default of payment of purchase-money shall have occurred more than once, the defaulting bidders shall be held jointly and severally responsible for such difference to the extent of the amount of their respective bids. Provided always, that every such re-sale shall be made after notification and in the forms prescribed by Section VI of this Act; and that such notification shall not be issued until the expiration of three clear days after the day on which the default shall have occurred. Provided also, that payment or tender of payment by or on behalf of the proprietor of the arrear for which the estate was first sold and of the arrear which may have subsequently become due, if such payment or tender of payment be made before sunset of the day preceding the day of the notification of re-sale and after the defaulting purchaser shall have made the deposit required by Section XXII of this Act, shall bar such re-sale."

Full payment of purchase-money.

Proviso 1st.

Proviso 2nd.

MR. J. DUNBAR, *Member of the Board of Revenue, Lower Provinces.*

Supposing the price bid by a defaulting bidder to have been more than the arrear for which the estate was sold, Mr. Dunbar considers it scarcely fair, in addition to the forfeit of his deposit, to make him answerable for the whole difference between his bid and the price eventually obtained, and deems it would be sufficient to make him responsible for any part of the arrear which might yet remain due after a conclusive sale. Forfeiture of a twenty-five per cent deposit and this contingent further responsibility are quite enough (Mr. Dunbar thinks) to keep off collusive or reckless bidders, whilst default would probably be the consequence of inability arising from no dishonesty of purpose, and so long as Government secures its own demand, he does not see why it should go beyond that to enable the defaulting proprietor to compel the defaulting bidder to make him a present.

REMARKS.

This Section is a re-enactment, without any alteration, of one from the existing law (Act I. of 1845). If Mr. Dunbar's suggestion be adopted, it will completely alter the principle of the proceeding of the revenue sale. The

collector, in conducting the sale of an estate for arrears of revenue, acts in his executive capacity something like a sale agent on the part of the defaulting landholder: hence all sales are made at the risk and responsibility of the defaulter and *not* of Government; the collector is only responsible that it be conducted with fairness and in conformity with the law.

Taking this as a fundamental principle of the revenue sale, there exist good and sufficient reasons for making the defaulting bidder responsible for the whole amount of his bid for the benefit of the defaulting proprietor.

MR. R. F. HODGSON, *Collector of Behar.*

Mr. Hodgson conceives that some distinction might be drawn between cases where the re-sale exceeds the amount of the first sale, and where there is a declension of price. A compulsion of payment seems to him equitable in the latter case, but barely so in the former where the proprietor is himself the purchaser; and he considers the mulct paid in as deposit to be amply sufficient to preclude any reckless speculation. *(See paragraph 13 of his letter, "Further Papers No. 4," page 104.)*

REMARKS.

If the distinction Mr. Hodgson proposes to draw be adopted, the first defaulting bidder may get a *furzee* (a man of straw) to bid at the re-sale, and make him bid a sum just exceeding the amount bid at the first sale, and thereby relieve himself from the responsibility. It was to prevent the defaulting bidder from having recourse to this species of fraud that the Section in question was so framed.

MR. W. DAMPIER, *Member of the Board of Revenue, Lower Provinces.*

Mr. Dampier would not allow the defaulting proprietor more than one option of recovering his estate by the payment of his arrear in case of the default of the purchaser or purchasers.

REMARKS.

Mr. Dampier's suggestion does not appear to be based on principle, but on expediency. It is but fair to allow even the last moment to the defaulting proprietor to reclaim his estate on payment of the full amount due from it. The benefit to him will, moreover, be a boon to all the under-tenants, whose rights are jeopardised by every public sale.

MR. H. STAINFORTH, *late Commissioner of Bhaugulpore.*

Mr. Stainforth suggests the addition of some provision at the end of this Section, allowing a defaulter no longer time than that given to auction purchasers, for completing payment of his balance, as it may be impossible, from some cause or other, to receive the tender of payment at the time it is made by him, and some estates are made salable only twice, others only once.

REMARKS.

Mr. Stainforth's suggestion is also liable to objection. The time given to the defaulting proprietor to reclaim the estate by payment of the arrear till sunset of the day preceding the successive re-sale after the deposit of the defaulting purchaser has become forfeited, is a sufficient check on the commission of any actual fraud or the obtaining of any advantage, while on the other hand justice is liberally extended to the really unfortunate defaulter, whose loss of property may be the cause of the utter ruin of himself and his family, not to mention his under-tenants.

OBSERVATIONS UPON SECTION XXIV.

Appeals.

"XXIV. It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act if preferred to him on or before the fifteenth day from the date of sale, reckoning as in Section XXIII, or if preferred to the Collector for transmission to the Commissioner, on or before the tenth day from the day of sale, and not otherwise; and the Commissioner shall be competent in every case of appeal so preferred, to annul any sale of an estate made under this Act, which shall appear to him not to have been conducted according to the provisions of this Act, awarding at the same time to the purchaser a payment from the proprietor of any moderate compensation for his loss, if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed the interest, at the current rate of Government Securities, on the amount of deposit or balance of purchase-money during the period of its being retained in the Collector's Office; and the order of the Commissioner shall, in such cases, be final."

MR. F. A. LUSHINGTON, *Officiating Collector of the 24-Pergunnahs.*

Mr. Lushington observes that, although by this Section the commissioner is empowered to cancel any sale, and award compensation and moderate damages to the purchaser, yet no provision is made for the payment of damage or compensation when a sale has been unwarrantably effected through any mistake of the amlah of his office.

REMARKS.

It appears that Mr. Lushington has overlooked the provision contained in the concluding part of Section XXXIII of this Bill, which debars no "person considering himself wronged by any act or omission connected with a sale, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged." This gives the privilege to every person, whether defaulter or purchaser or any other, who may consider himself wronged by any person, to recover damages from him by suit in the civil court. The amlah by whose *mistake* such sale was effected will, in serious cases, be liable to dismissal from his office; and if such sale have been effected by the guilty intention of any person, such person will be liable to be criminally punished under the provisions of the Indian Penal Code. But it must not be forgotten that it is as impossible to guard against mistakes as to foresee and prevent accidents.

OBSERVATIONS UPON SECTION XXV.

Annulment of sale in special cases.

"XXV. It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale and to represent the case to the Board of Revenue, who, if they see cause, may recommend to the local Government to annul the sale; and the local Government in any such case may annul the sale and cause the estate to be restored to the proprietor on such conditions as may appear equitable and proper."

MR. H. STAINFORTH, *late Commissioner of Bhaugulpore.*

Mr. Stainforth suggests that this Section be altered, so as to allow the commissioner to recommend reversal of a sale even though a petition be not presented within the time specified in Section XXIV, so as to provide relief to a proprietor in the power of his adversary or at the point of death and thus incapacitated from filing a petition within time. An alteration in the Section also seems necessary, if (as he supposes) it is intended to sell "rights and interests" in estates in realisation of balances which have accrued on estates other than those in which the said rights and interests lie.

REMARKS.

If the limitation, as suggested by Mr. Stainforth, be withdrawn, it will entail a serious hardship on an innocent purchaser, and the confidence as to the fixed nature of the revenue sale will be shaken, which may generally affect the sale price of estates. The adoption of the suggestion will likewise materially interfere with the provisions of Section XXVI.

OBSERVATIONS UPON SECTION XXVI.

Sales when final.

"XXVI. All sales of which the purchase-money has been paid up as prescribed in Section XXIII of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the thirtieth day from the day of sale, reckoning the said day of sale as the first of the said thirty days. And sales against which an appeal may have been preferred, and the appeal dismissed by the Commissioner, shall be final and conclusive from the date of such dismissal, if more than thirty days from the day of sale, or if less, then at noon of the thirtieth day as above provided."

REMARKS.

This Section is a re-enactment of the existing law, and no alteration has been suggested in regard to it.

OBSERVATIONS UPON SECTION XXVII.

Certificate of sales.

"XXVII. Immediately upon a sale becoming final and conclusive, the Collector or other Officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule A annexed to this Act. And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified; and the Collector shall also notify such transfer by written proclamation in his own cutcherry, and in those of the Moonsiff and Darogah of the jurisdiction within which any part of the estate or share of an estate sold shall be situated, and also at the cutcherry of the malgoozar or owner of the estate, or share of an estate, or on some conspicuous place on the estate, or share of an estate."

MR. H. V. SCHALCH, *Officiating Collector of Balasore.*

Mr. Schalch suggests that the collector should be authorised, when necessary, to put the auction-purchaser in possession of the estate to which he has certified his title. *(See paragraphs* 10 *and* 11 *of his letter, "Further Papers No.* 4," *pages* 79 *and* 80).

MR. E. A. SAMUELLS, *Commissioner of Cuttack.*

With reference to the above suggestion, Mr. Samuells observes that it certainly is a defect in the law that, if the defaulting proprietor retains forcible possession, the magistrate is bound, under Act IV. of 1840, to support him, and the purchaser is obliged to carry his certificate of title in the civil court; and Mr. Samuells would amend this Section by adding the words "and in the event of any person other than the purchaser retaining forcible possession of the estate or share of an estate sold, the purchaser may make affidavit before any magistrate of his inability to obtain possession without the aid of the police, and the magistrate, on being satisfied by the production of the collector's certificate that the legal title to the estate is vested in the applicant, shall thereupon afford him the aid of such police force as may be necessary, and shall place him in possession, any thing in Act IV. of 1840 to the contrary notwithstanding: and if any person resists the execution of an order for possession of an estate or share of an estate given under this Section, or refuses obedience thereto, he shall be liable, on conviction before a magistrate, to the same penalties as if he had resisted the execution of an order given under Act IV. of 1840."

REMARKS.

The suggestion of Messrs. Schalch and Samuells in respect to putting the auction-purchaser in possession of the estate to which the collector has certified his title, is worthy of consideration.

The question of putting the auction-purchaser in possession of the estate was most strongly urged by the late Board when Act XII. of 1841 was under consideration; but the Supreme Government, then headed by Mr. Robertson, declined to re-enact the provision of Regulation XI. of 1822 in respect thereto. The notes and papers on the subject may, if necessary, be referred to.

SECTION XXVIII.—*(continued.)*

It is by all means desirable to revive the power of putting the auction-purchaser in possession of his purchase as suggested, and the reasons set forth by Mr. Samuells are very cogent. Perhaps the case of the Midnapore purchase and possession is still fresh in the memory of many, and it is but a sample of such cases.

As the Bill proposes to register certain classes of under-tenures with a view to protect them from the revenue sale, it is most desirable, under such circumstances, that a responsible public officer be deputed, if necessary, with available records from the collectorate, to put the auction-purchaser in possession with reference thereto. This will in many cases prevent affray and bloodshed, and possession will be quietly and speedily given.

The Sheriff of Calcutta, under Act VI. of 1855, now puts the purchaser at a sale held by him in possession of real property, of which the judgment-debtor is in actual possession and of which an actual delivery can be made.

OBSERVATIONS UPON SECTION XXVIII.

Application of purchase-money.

"XXVIII. The Collector shall apply the purchase-money first to the liquidation of all arrears due from the estate or share sold upon the latest day of payment; and secondly to the liquidation of all outstanding demands debited to the estate or share of an estate in the public accounts of the district, holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate or share of an estate sold, to be paid to his or their receipt on demand in the manner following: to wit, in shares proportioned to their recorded interest in the estate or share of an estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt. Provided that, if before payment to the late proprietor or proprietors of any surplus that may remain of the purchase-money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a Civil Court."

Proviso.

MR. F. B. SIMSON, *Officiating Deputy Collector of Bullooah.*

Mr. Simson suggests that the course to be pursued by the collector, when a portion of the body of joint-proprietors of an estate refuse to sign a joint-receipt, should be defined. According to the present law, which is the same as the rule contained in this Section, it would seem that, unless the whole body of joint-proprietors give the receipt, the collector cannot pay even those sharers whose rights are not affected by the orders of the civil courts directing the collector to attach certain amounts of the surplus proceeds in the name of some of the joint-holders whose proportion of share is unknown to the collector. *(See paragraph* 15 *of his letter, "Further Papers No.* 4," *page* 64.*)*

REMARKS.

This re-enacted Section cannot safely be altered. The Section as it stands is good for all purposes. There could be no objection to pay a registered recorded proprietor the share of the sale proceeds to which he may be entitled as per record. The wording of the Section will justify such construction.

MR. A. SCONCE, *Judge of the Sudder Court, Lower Provinces.*

Mr. Sconce suggests the omission of the word "recorded" before the word "proprietor" in the tenth line of this Section.

REMARKS.

The introduction of the word "recorded" before "proprietor" in the tenth line is in accordance with the old law. The reason for the adoption of the term is to introduce as much as possible direct and indirect coercive measures to secure the registration of the names of the *bonâ fide* proprietors in the records of the collector of the district, and discourage by all means the pernicious system of *benamee* in the country. It is therefore unadvisable to adopt Mr. Sconce's suggestion.

OBSERVATIONS UPON SECTION XXIX.

"XXIX. If a sale made under this Act be annulled by a final decree of a Civil Court, execution of such decree must be obtained before six months after the date thereof; otherwise the party obtaining the decree shall lose all benefit therefrom. And when execution of such a decree is duly obtained, the party obtaining it shall not be restored to possession, until any amount of surplus purchase-money that may have been paid away by order of a Civil Court be repaid by him, with interest at the highest current rate of Government Securities. And if such party shall neglect to pay any amount so recoverable, within six months from the date of such final decree, he shall lose all benefit therefrom."

Effects of annulment by decree of Court of sales under this Act.

MR. H. STAINFORTH, *late Commissioner of Bhaugulpore.*

Mr. Stainforth does not understand how the execution of a decree can be obtained without restoration to possession. The terms seem to him synonymous and convertible.

REMARKS.

Mr. Stainforth's objection is merely verbal. To obtain an order for the execution of a decree and to obtain possession under it are very different things. The former is a matter of course; but to obtain possession of the property it is required that an officer of the court be deputed to the mofussil for that special purpose. The Section provides that the party obtaining an order for the execution of the decree for the possession of the property shall not be put in possession unless he perform certain conditions in respect thereto.

MR. J. DUNBAR, *Member of the Board of Revenue, Lower Provinces.*

Mr. Dunbar takes exception to one condition of restoration to possession as being scarcely just. A proprietor may obtain a decree annulling the sale of the estate, but he is not to be put in possession "until any amount of surplus purchase-money, that may have been paid away by order of a civil court, be repaid with interest at the highest current rate of Government securities." As by a subsequent Section (XXXIII) it is provided that no person shall be entitled to contest the legality of a sale after having received any portion of the purchase-money, the re-payment here provided for, Mr. Dunbar thinks, must refer to payments made to other parties; but he does not see on what principle they should be chargeable to a party who in no way benefited by them, or why they should be allowed to affect his right under a decree which must be grounded on considerations of an entirely different character.

REMARKS.

Mr. Dunbar has clearly misunderstood the Section, as it provides that, if any money out of the sale-proceeds have been paid away by order of the civil court (meaning in satisfaction of debt or liability of the decree-holder or the person from whom he derived his title) without the decree-holder being a consenting party to such payment, the act of the court must be considered as binding on him. There is no inconsistency between this and Section XXXIII; for since the decree-holder derived benefit by getting his debt liquidated in consequence of the payment made by order of the court, he is bound to refund it before he can get the benefit of the decree, which may perhaps have been passed by the self-same court which ordered payment of the money on account of the decree-holder.

OBSERVATIONS UPON SECTION XXX.

"XXX. Any suit brought to oust the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf partly of himself and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs."

No suits on the ground of *benamee* purchase.

This is a re-enactment of the old law, with a slight addition; but there being no remarks upon it by any officer, it is presumed that none have suggestions to offer.

OBSERVATIONS UPON SECTION XXXI.

"XXXI. The annulment by a Commissioner or by Government of a sale made under this Act shall be publicly notified by the Collector or other officer as aforesaid, in the same manner as the becoming final and conclusive of sales is required to be notified by Section XXVI of this Act; and the amount of deposit and balance of purchase-money shall be forthwith returned to the purchaser with interest thereon at the highest rate of the current public securities."

Notification of annulment of sale

MR. W. DAMPIER, *Member of the Board of Revenue, Lower Provinces.*

Mr. Dampier asks by whom the interest is to be paid. He supposes by the Government, as the sale can only be annulled, under Section XXIV, for non-observance of the provisions of the Act, or, under Section XXV, in cases of peculiar hardship.

REMARK.

Mr. Dunbar's question in respect to this Section is of course to be replied to in the affirmative.

OBSERVATIONS UPON SECTION XXXII.

"XXXII. The party certified as the proprietor of an estate or share of an estate by purchase under this Act, shall be answerable for all instalments of the revenue of Government which may fall due subsequently to the latest day of payment aforesaid."

Liability of purchaser.

REMARK.

No remark is made by any officer on this Section.

OBSERVATIONS UPON SECTION XXXIII.

"XXXIII. No sale for arrears of revenue or other demands realisable in the same manner as arrears of revenue are realisable, made after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act: and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under Section XXIV of this Act: and no suit to annul a sale made under this Act shall be received by any Court of Justice unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in Section XXVI of this Act: and no person shall be entitled to contest the legality of a sale, after having received any portion of the purchase-money. Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged."

Jurisdiction of Civil Courts in suits to amend sales.

Proviso.

MR. J. DUNBAR, *Member of the Board of Revenue, Lower Provinces.*

Mr. Dunbar thinks it desirable that the acts or omissions referred to in the proviso should be more distinctly specified, lest, if left as it now stands, it might give rise to unpleasant and very inconvenient difficulties.

REMARKS.

The proviso of this Section cannot be made more distinct or specific, as it is better to leave the civil court to define in each case what will constitute the act or omission of the party for which he is liable to pay damages. The nature and quality of the act or omission which will constitute the offence will necessarily be so varying as not to admit of being defined in a Revenue Sale Law.

MR. H. STAINFORTH, *late Commissioner of Bhaugulpore.*

Mr. Stainforth considers a slight alteration at the commencement of this Section necessary, because, as noticed by him in Section III, we can, in realisation of demands recoverable as revenue, sell under a different law.

SECTION XXXIII.—(*continued.*)

REMARK.

Mr. Stainforth does not point out what slight alteration at the commencement of this Section he proposes, and of course no explanation can be offered.

MR. J. S. SPANKIE, *Officiating Commissioner of Chittagong.*

Mr. Spankie observes (with reference to that part of this Section which provides that, unless an appeal shall have been preferred to the Commissioner, no case shall lie in the civil court for reversal of the sale) that, in districts where estates are numerous, mistakes are apt to occur, and it sometimes happens that mehals are sold through an oversight, and the unfortunate proprietor remains unaware of the fact until the period of appeal has gone by.

REMARKS.

If Mr. Spankie's suggestion be adopted, it will only give a laxity to the sale rule, which should by no means be allowed to creep into the law.

OBSERVATIONS UPON SECTION XXXIV.

If sale annulled, purchase-money to be refunded

"XXXIV. In the event of a sale being annulled by a final decree of a Court of Justice, the purchase-money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities."

REMARKS.

This Section is a mere re-enactment of Section XXV of Act I. of 1845, and there being no remarks or suggestions upon it, no observation is called for.

OBSERVATIONS UPON SECTIONS XXXV to XLII.

Rights of a purchaser of permanently settled estate sold for its own arrears.

"XXXV. The purchaser of an entire estate sold under this Act, for the recovery of arrears due on account of the same, in the permanently settled districts of Bengal, Behar, Orissa, and Benares, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement; and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all under-tenants, with the following exceptions.

First. Istemraree or mokurreree tenures which were held at a fixed rent more than twelve years before the permanent settlement, which have been duly registered under Section XXXVI of this Act, and whereon no arrear of rent was due on the latest day of payment of revenue as fixed under Sections III and IV of this Act.

Secondly. Tenures existing at the time of settlement, which have not been, or may not be proved to be liable to increase of assessment on the grounds stated in Section LI Regulation VIII of 1793, which shall have been duly registered under Section XXXVI of this Act, and whereon no arrear of rent was due on the latest day of payment of revenue as fixed under Sections III and IV of this Act.

Thirdly. Tenures of whatsoever description, and farms for terms of years, which have been created since the time of settlement, which have been duly registered under Section XXXVII of this Act, and whereon no arrear of rent was due on the latest day of payment of revenue as fixed under Sections III and IV of this Act.

Fourthly. Lands whereon dwelling houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed in Sections IX and X of Regulation V of 1812 for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he considers the same to have been held at an unfair rent, and if the same sha ll not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years; but not otherwise.

Proviso.

Provided always, that nothing in this Section contained shall be construed to entitle any such purchaser as aforesaid to eject any khoodkasht kudeemee ryot, or any resident hereditary cultivator having a prescriptive right of occupancy at fixed rents, or at rents assessable according to fixed rules under the regulations in force, or to enhance the rent of any such ryot or cultivator otherwise than in the manner prescribed by the laws in force, or otherwise than the former proprietor at the time of settlement may have been entitled to do."

Registration of old talookdaree tenures.

"XXXVI. The following rules for the registration of talookdaree tenures forming the first and second classes excepted in the last preceding Section, shall be observed.

First. The holder of the under-tenure shall be at liberty to apply for the registration of his under-tenure, by petition presented to the Collector of the district in whose jurisdiction the parent estate is situated, within three years from the date of the passing of this Act. The application shall contain the following particulars as far as the same are ascertainable.

1. The pergunnah or pergunnahs in which the tenure is situated.
2. The denomination of the tenure.
3. The name or names of the village or villages whereof the land is composed, or wherein it is situated.
4. The area of the land comprised in the tenure, with its boundaries in complete detail.
5. The amount of rent and cesses payable annually for the tenure, and the duties, if any, required to be performed on account of it.
6. The date of the deed constituting the tenure or the date when the tenure was created.
7. The name of the proprietor who created the tenure.
8. The name of the original holder of the under-tenure.
9. The name of the present possessor, and if he be not the original holder his relationship to that person, and the mode in which he succeeded to the tenure, whether by inheirtauce, gift, purchase, or otherwise, and whether he holds jointly or solely.

Secondly. The Collector on receipt of such application shall serve a notice on the recorded proprietor of the estate in which the tenure is situated, with a copy of the application, and shall also cause a notice with a copy of the application annexed to be published at the places and in the manner prescribed by Section VI of this Act, requiring the proprietor or any party interested, within thirty days from the date of the issue of the said notice, to file any objection he may have to the registry of the tenure, or to any statement contained in the application. In the absence of any objection, the Collector, if after making due inquiry he is satisfied of the applicant's claim, shall register the tenure. If any objection is made, he shall require both parties, within a reasonable time, to produce their respective proofs, and shall fix a day, by notification in his cutcherry, for the summary investigation of the case. If after such summary investigation he shall be of opinion that the applicant has failed to establish his claim, he shall reject the application. If after such investigation he shall be of the contrary opinion, he shall forthwith register the under-tenure in the provisional registry book. Any party dissatisfied with the Collector's award may, within one year from the date of the award, but not afterwards, institute a suit in the Civil Court for the reversal of the same, and after the final decision of the Civil Court, the tenure shall be dealt with according to such decision. If the decision be in favor of the claimant of the tenure, on his producing an authenticated copy of such final decree, the tenure shall be transferred from the provisional registry to the permanent registry book; but if the final decision be otherwise, on the proprietor producing an authenticated copy of the same, the tenure shall be erased from the provisional registry book."

Registration of new talookdaree tenures and farms.

"XXXVII. The following rules for the registration of talookdaree tenures and farms, forming the third class of tenures excepted in Section XXXV of this Act, shall be observed."

All the rules prescribed in the last preceding Section shall apply to this class of tenures also, with the following additional rules.

Immediately upon receipt of the application, the Collector shall cause whatever measurement, survey, and local enquiry he may deem necessary for the security of the Government revenue, to be made. When no objection on the part of the proprietor of the parent estate, or of any other party interested, is filed; or when, if such objection is filed, the Collector after summary investigation may be of opinion that the applicant has established his claim so far as the rights of the proprietor and other private parties are concerned; before registering the tenure the Collector shall satisfy himself that it was created in good faith so far as the interests of the Government revenue are concerned, and that the rent payable by the holder is not less than is fully sufficient to afford a fair proportion of the revenue assessed upon the parent estate. If the Collector be not satisfied upon this point, he shall reject the application. If he be satisfied upon this point, he shall register the tenure in the provisional registry book under the rules prescribed in Section XXXVIII of this Act. Provided always that, in the case of such tenures created after the passing of this Act, no application for registration shall be received, unless the same be submitted within one month from the date of the deed constituting the tenure."

Protection of under-tenures provisionally registered.

"XXXVIII. Talookdaree tenures for the registration of which application shall be made within the prescribed time shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the summary investigation of the Collector, and shall be protected eventually by provisional or permanent registration, if the award of the Collector upon such application be in favor of the applicant, or in case of that award being against the applicant, if that award be reversed by the final decision of a Civil Court."

SECTIONS XXXV to XLII.—*(continued.)*

"XXXIX. The awards of Collectors passed under Sections XXXVI and XXXVII of this Act, shall be open to appeal to the superior revenue authorities in usual course."

Appeals from Collector's registration awards

"XL. No Civil Court shall be competent to interfere with any award of any revenue authoritity passed under Sections XXXVI and XXXVII of this Act, founded upon any consideration regarding the good faith in which a tenure may have been created so far as the interests of the Government revenue are concerned, or the adequacy of the rent for the security of that revenue."

Restriction of jurisdiction of Civil Courts.

"XLI. After the expiration of one year from the date of registration in the provisional registry book, the Collector shall transfer the registration to the permanent registry book, unless it be shown that a Civil suit has been filed to annul the registration; in which case he shall suspend registration in the permanent registry book pending the final result of such suit. The entry in the permanent registry book shall be an effectual protection of the under-tenure so registered, unless within sixty years from the date of registry a decree be passed at the suit of Government by a Civil Court, pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue."

Protection of under-tenures permanently registered.

"XLII. The purchaser of an estate sold under this Act for the recovery of arrears due on account of the same in districts other than those mentioned in Section XXXV, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renue, saving always and except *bonâ fide* leases of ground for the erection of dwelling-houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water-courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing in this Act contained shall be construed to entitle any purchaser of land at a public sale to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid than was demandable by the former malgoozar, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former malgoozars from the old established rates by special favor, or for a consideration, or the like, or in cases in which it may be proved that, according to the custom of the pergunnah, mouzah, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government."

Rights of a purchaser of an estate not permanently settled sold for its own arrears.

MR. E. A. READE, *Senior Member of the Board of Revenue, North-Western Provinces.*

Mr. Reade suggests the necessity of adding to the exceptions of Section XXXV as respects Benares, in which Province there are many rent-free parcels not exceeding fifty biggahs, whose titles have been declared valid by judicial investigation and decisions in the civil court or in the settlement office under Section VI, Regulation IX. 1825; and as these investigations are now progressing to completion in all cases, he considers it desirable to provide protection for such as have been or shall be finally exempted from interference by awards of the settlement office and civil courts in appeal. In the North-Western Provinces, also, there are many parcels of rent-free land not exceeding ten biggahs, released at the discretion of settlement officers from settlement to settlement, and some of large areas exempted with the sanction of Government on the same terms; and these too, he thinks, might well be added to the exceptions of Section XXXV. Exception should further be made in Sections XXXVI to XLI of the Province of Benares, where there are no talookdaree tenures resembling those of Bengal. Lastly, both in the Province of Benares and the North-Western Provinces, there are many proprietary parcel-holders on whose tenures jummas have been fixed at settlement, which are paid through the malgoozar of the estate within the limits of which they are situated, or at the tehseeldaries direct, and these also, Mr. Reade is of opinion, should be declared under protection, if no arrear of revenue be due thereon at the latest day of payment.

REMARKS.

With reference to Mr. Reade's suggestion, it is desirable to get the lakhirajdars of every description registered in *separate* books (one for holdings below fifty or a hundred biggahs, according to the provinces in which

they may be situated, and another for holdings exceeding the local limit) under the same rules as the under-tenures are proposed to be registered, and subject to the same penalty as the under-tenants in case of a revenue sale. This will certainly in time put a stop to much litigation; and the purchaser of an estate will at once have the means of knowing which are really the lakhiraj and which the kherajee tenures in the estate, while the lakhirajdars will be protected from unnecessary annoyance and litigation from the hands of every successive new purchaser.

In respect to proprietary parcel-holders paying their fixed rent through the malgoozar of the estate, they are included in the present exceptions, and can accordingly apply for registration under the rules therein provided They are in fact of the same description as *been kharija* alias *shikmee talooks* or dependent talooks in Bengal.

The proprietary parcel-holders who pay their revenue to the tuhseeldar direct, are like the kharija or huzooree talooks of Bengal, and cannot be affected by the revenue sale of the estate from which they were originally separated; they need not be registered under these Sections, which would alter the character of these kharija talooks, for most of those kharija talooks in Bengal pay their revenue direct to the collector of the district and bear separate numbers on the *towjee* from the day they were separated from the parent estate.

MR. C. C. JACKSON, *Junior Member of the Board of Revenue, North-Western Provinces.*

Mr. Jackson observes that Section XXXVI applies apparently to the sub-tenures in Bengal called putnee talooks, and not to the talookdary of the North-Western Provinces comprising several villages or distinct estates, for which the talookdar engages separately or collectively, or receives a compensation for his rights, in the shape of a per-centage on the assessment. Mr. Jackson suggests that the protection provided by that Section and by Section XXXVII also, would be more complete, both for the protection of the estate and for the putnee talookdar, if the latter were obliged to show that the sale of the estate was not attributable to his own default, by production of receipt for payment of the rent to which his talook was liable, and by allowing him to deposit that amount in the Government treasury in the event of its being refused on tender to the proprietor of the estate. The Lieutenant Governor of Agra, however, observes that the above suggestion appears to have been already met by the provisions of Clause 3, Section XXXV of the Bill.

REMARKS.

As the Bill is to have operation exclusively in Bengal, it is not necessary to make any comment on Mr. Jackson's remarks, particularly as the Lieutenant Governor of the North-Western Provinces himself observes that the suggestion of Mr. Jackson appears to have already been met by the provisions of Clause 3, Section XXXV of the Bill.

LIEUTENANT GOVERNOR OF BENGAL.

The Lieutenant Governor of Bengal, in lieu of the provisions contained in the Bill, offers a plan according to which he would desire to legislate on the subject of under-tenures. *(See from paragraph 16 to the end of his minute, "Further Papers No. 4," pages 6 to 17.)*

REMARKS.

The remarks of the Lieutenant Governor of Bengal on the subject, from paragraph 16 to the end of his minute (*vide pages 6 to 17*), will be noticed in the following order, with reference to the subjects to which they respectively relate.

SECTIONS XXXV to XLII.—*(continued.)*

The Lieutenant Governor of Bengal remarks on the subject of ante-settlement tenures in paragraphs 16 to 19 substantially as follows.

He thinks it would be as unjust to make registration a condition of the continuance of the permanent settlement as regards zemindaries, as to make registration a condition of the continuance of the permanent rights guaranteed to ante-settlement tenures by the law of the permanent settlement.

1st. Because the rights of both were acknowledged at the same time and are co-eval with the permanent settlement.

2nd. Because the proposed measure, as regards ante-settlement tenures, is opposed to the law of 1793.

3rd. Because the law of 1845 gave the holders of these tenures no new rights, but only declared what had been the law ever since 1793.

There are four principal descriptions of subordinate land-tenures in permanently-settled estates, namely :—

1st. Rent-free tenures.

2nd. Ante-settlement tenures paying fixed rent, including mokurruree, istemraree, &c.

3rd. Post-settlement tenures paying fixed rent, including putnee, &c.

4th. Variable rent-paying tenures, the holders thereof having in some cases the right of occupancy and being in others tenants at will.

The rent-free tenures, if not registered within the prescribed time, as declared by Sections XXVI and XXVII, Regulation XIX. of 1793, and Sections XIX and XXI, Regulation VIII. of 1800, became subject to the payment of revenue and the tenure *de facto* invalid and liable to fine. Such is the penal provision of the existing law for not complying with its requisition, in whatever other way the tenure itself may be valid.

In respect to ante-settlement tenures, including mokurruree and istemraree talooks, Section XXV, Regulation XLVIII. of 1793 provides that dependent talookdars or under-farmers omitting to furnish by the specified time any information that may be required by the collector for preparing the register, are liable to such fine as may appear proper, and the amount thereof is to be levied by the same process as is authorised for the recovery of arrears of revenue. It is to be observed that, for merely omitting to furnish the required information for registry, the law subjects the defaulter to an unlimited fine, which, in effect, is worse than forfeiture of property. By such forfeiture the property itself is lost to the owner, but the rest of his real and personal property is left to him; but in the case of an unlimited fine, the amount, at the discretion of Government, may be so great, that the whole of his real and personal property may be sold by the same summary process as is usually adopted for the recovery of arrears of revenue, and a balance may remain, for which his person may still be liable to arrest and commitment to jail.

The third and fourth classes of tenures require no notice here.

The proprietors of permanently settled estates are by Section XXV, Regulation XLVIII. of 1793 and Sections XIX and XXI of Regulation VIII. 1800, equally liable to pay an unlimited fine, and to all the consequences just pointed out.

The severity of the provisions of the laws of 1793 and 1800 for securing compliance with the rules, was solely for the protection of the public revenue: here advantages are held out to the landholders in completing the registry in the mode required.

SECTIONS XXXV to XLII.—(continued.)

The Lieutenant Governor, without sufficiently considering the advantages of the measure, if successfully introduced, adverts to the new conditions to be imposed on the ante-settlement tenures. But if the laws for compulsory registry quoted in the preceding observations, and having for their object the protection of the public revenue, be considered in connection with the numerous advantages the proposed law holds out to that same class of tenures, the Bill will not be deemed justly liable to the charge of being unjust, as when but one side of the matter is regarded.

The important advantages to be gained by the ante-settlement tenures, if they be registered under this Bill, are, that they will receive protection by summary measure from the trouble, annoyance, and litigation, which every successive revenue sale purchaser is capable of giving them, particularly when oral evidence is by death or otherwise daily disappearing, while the documentary ones are so liable in a country like India, by fire, inundation, and partition of family property, to be destroyed, such registry after enquiry will increase nearly a hundred per cent. the value of the under-tenures. While sales under execution of decrees now bring a mere nominal price for these under-tenures, there will be a considerable increase in the value of such registered property, particularly if measures be adopted for giving possession to purchasers under the rules now in force regarding sheriffs' sales in Calcutta.

Although compulsory registration is most desirable, and it is nothing but following up the laws of 1793 and of subsequent years in a modified form, yet, to satisfy the views of the Lieutenant Governor, the provision of the proposed law may be altered in such a manner as to leave it optional with the ante-settlement tenure-holder to register under this Bill, or not, as he may think proper. If he adopt the required process, he will be entitled to summary protection under it; otherwise he will be left to protect himself as he best can, against the legal proceedings of the auction purchaser under the ordinary law, by proving his title whenever disputed.

The Lieutenant Governor further remarks in respect to ante-settlement tenures in his minute from paragraphs 20 to 27 in substance as follows:

The Bill proposes to annex to these tenures a new penalty for arrears of rent, to which they were never liable before, and against which they were guaranteed by former laws, namely, forfeiture of every right and privilege attaching to them, subjection to the operation of the ordinary power of an auction-purchaser, and liability to be voided and annulled (and of its holder to be ejected at the will of the new zemindar) just as if the holder were a tenant at will of yesterday, and as if the laws of 1793 and 1799 had never been enacted for his benefit. In reply to the argument that registry must be advantageous to the tenant, the Lieutenant Governor obverves, first, that to *enable* a tenant to register is a different thing from *forcing* him to register (as the Bill provides) on pain of losing his rights on the occurrence of a zemindaree sale. Secondly, that successive actions against a tenant who has once succeeded in proving his title are not only unlikely to take place, but (if they do take place) can harm only the plaintiff. Thirdly, that the tenants will be any thing but satisfied with a law which will drive them into court to prove their title, sale or no sale, occasion or no occasion. Lastly, that the Bill will probably give rise to an innumerable quantity of false claims to establish a title under this class of tenures, to be supported by the usual amount of perjury and forgery.

If the principle of equity or natural justice is to guide the proceedings of the Indian Legislature or the judgments of the civil courts, it is but fair and just that, if any mokurrureedar or istemrardar, by withholding his due rent, cause the parent estate to be sold for arrears of revenue, such mokurrureedar or istemrardar cannot be entitled to any protection for his omission or commission.

If we are to adopt the principle of holding a tenure on a fixed rent responsible for the punctual payment of

that rent, and authorised to regard the property and privilege possessed and exercised by the holder thereof as perpetually hypothecated to the proprietor of the estate in which it stood at the time the permanent settlement was concluded, it cannot be contended that, on failure of punctual payment of the rent which had been the cause of the sale of the parent estate for arrears of revenue, he shall nevertheless be entitled to continue in that possession and to enjoy those privileges. If such a principle be adopted, it will amount to a premium for the commission of fraud and wrong-doing.

Besides, the provisions of the proposed law are chiefly intended to protect the under-tenure against any frauds of the kind above noticed, on the part of the proprietor of the parent estate. The interference proposed, though not, strictly speaking, *directly* sanctioned by the terms of the permanent settlement, is so obviously beneficial in its tendency as to be approved of by almost all public officers. On the other hand, would it not be an equal justice to the late proprietor of the parent estate to continue to the auction purchaser the privilege of annulling such defaulting tenures, and thereby give him the benefit of the additional price his estate may thereby fetch?

Though the registry of the mokurreree and istemraree tenures should be left to the discretion of the holder, yet the penalty noticed in the last paragraph attaching to the defaulting under-tenure is worthy of consideration.

The Lieutenant Governor, himself a great advocate of the Revenue Survey of Bengal, introduced at an enormous cost to the state, and that at a time when the public finances were greatly involved, has thought fit to make such remarks as are contained in the third and last heads as noted above, overlooking entirely the vast amount of litigation and false claims that measure has, perhaps unconsciously to him, been the cause of creating in this unhappy land by survey proceedings, which, after all, will not produce the same advantage as the permanent registry of the under-tenures. The revenue survey, even if it be a correct and permanent one, (which it cannot be as regards those parts of the country, on the banks of large rivers, that are almost every year subject to alluvion and diluvion,) will only give the boundary of the villages and estates, and the area of land which they respectively contain; but these are not sufficient to quiet the disputed claim of the holders of the under-tenures of the present and succeeding generations; while the registry will fix the right of the holder in regard to the possession of his tenure, with specifications as provided for in the Bill, and at the same time serve as a permanent document to prevent future litigation, without any great expense to the Government, and the public will have the means of knowing the real assets of most of the estates of which the under-tenures have been registered.

The Lieutenant Governor of Bengal has been pleased, in paragraphs 28 to 39 of his minute, to remark on post-settlement tenures substantially as follows.

His Honor fears that the provisions of the Bill on this head will prove quite impracticable, by reason of the immense litigation which they will give rise to in the shape of summary investigations by collectors, and appeals therefrom to the commissioner and Board of Revenue, and afterwards as regular suits and appeals before the civil courts, and produce inevitable delays and arrears as well as expense and other concomitant mischiefs. If this anticipation be correct, an amount of hazard (he observes) will be incurred by this part of the Bill, far overbalancing all the good at which it aims, especially if it should appear that the essential end in view may be attained without such risk.

If the registry be limited only to the salable under-tenures and the appeals to the revenue authorities be dispensed with, the objection of the Lieutenant Governor and other officers becomes reduced to a smaller compass.

The fear entertained arises from a misapprehension of the scheme, namely, that on an application for registry

of a single village, the whole zemindaree, which may consist of several hundred villages, will have to be measured, for the purpose of fixing the proportionate value of the said village.

This supposition is without foundation, and it will so appear when it is considered that the salable under-tenures generally consist of the four following classes:—

1*st*. The whole estate may be held as a single under-tenure either mokurreree or putnee.

2*nd*. A share of an estate may be held as a single under-tenure either mokurreree or putnee.

3*rd*. One or more villages of an estate may be held as a single under-tenure either mokurreree or putnee.

4*th*. A given quantity of land, with or without defined boundaries, within an estate or village, may be held as a single under-tenure either mokurreree or putnee.

In respect to the first class it is most easy to fix its valuation by comparing the *jumma* of the under-tenure with the sudder malgoozaree, and if it appear that the profit of the zemindar will be about one-half above the sudder malgoozaree, the registry of the tenure may be effected with perfect safety to the Government revenue; and no under-tenure falling below the said proportion should be registered.

The same remarks are applicable to the second class of under-tenures, as the jumma of the share which has been let out either as mokurreree or putnee, being compared with the sudder malgoozaree payable by such share, the profit of the zemindar will appear after paying the sudder jumma, and if that profit be found one-half above the sudder jumma the registry may be permitted.

The third class of mokurreree or putnee comprises those which consist of a few villages, and they admit of being registered by measuring and assessing those villages only, and it will not be necessary to measure or assess the whole pergunnah. If by measuring or assessing the village or villages which constitute the mokurreree or putnee, there appear to be a reserved rent to the profit of the zemindar of about one-half, and the other half be given up to the mokurreedar or putneedar, in consideration of the *pun* (the premium), the tenure may be safely registered as far as the protection of the Government revenue is concerned.

Suppose the whole zemindaree ever to come into the hands of Government with privilege of re-settlement, and such re-settlement be made on the basis of the rules laid down in paragraph 13 of the Government letter, dated 26th September 1832, given below.

"It appears to me that the gross or kutcha jummabundee of an estate being once ascertained, the rule should be to assume as the Government's share seventy or seventy-five per cent, leaving the remainder to cover all expenses of collections, all risks and all proprietary profits; and it should be prescribed that, on account of *malikana* not less than ten or more than twenty per cent, and on account of expenses not less than five nor (under any circumstances) more than fifteen per cent, should be allowed."

The holder of the tenure, in the case supposed, will be entitled to receive on account of *malikana* and *surunjamy* one-third, leaving two-thirds as the Government share. Hence, if similar or modified data or a moiety of the assets be adopted as the basis of registry, the public revenue cannot, under any circumstances, be in jeopardy.

The preceding remarks are likewise applicable to the fourth class of under-tenures, which consist of a certain quantity of land paying a certain sum as fixed rent.

From the preceding elucidation it will appear that no very great labor will be imposed on public officers in respect to the registry of the first and second classes of under-tenures, and that, in regard to the third and fourth

classes the labor will be much less than it is supposed by His Honor, as the measuring of a village or two, or a few hundred biggahs of land, with their *jummabundee*, for the purpose of registry, is no great work. The details required are to be filed with the application for registry, *vide* Art. 4, Clause 1, Section XXXVI, of the Bill. The duty of the collector will be reduced to mere *purtul*, that is, testing the measurement of the village or land, the registry of which is applied for. If the details given be thus found materially incorrect, the application may at once be rejected. A knowledge of the existence of such a rule of practice will be a caution to parties to furnish true statements and thus reduce the labors of the collector, as experience has proved in the case of ryots in private estates.

The Lieutenant Governor proceeds to show how he thinks this end can best be attained, namely, by a slight modification of a plan suggested many years ago and recently revised and adopted by Lord Dalhousie when Governor of Bengal. The details of the modified plan are given as follows, in paragraph 51 of his minute :—

" The purchaser at a sale held under this Act shall acquire the estate, subject to all leases, assignments, or other *incumbrances*, existing on the estate at the time of sale, with the following exceptions, that is to say—the said purchaser shall be entitled to avoid and annul all leases, assignments, and other incumbrances, created subsequent to the passing of this Act, which may not have been duly registered within one month from the date of the deed constituting the incumbrance, and at least three months before the date of the sale ; and the said purchaser shall also be entitled to annul and avoid all tenures created since the permanent settlement, whether before or after the passing of this act, and whether registered or unregistered, the terms of which may entitle each of the holders thereof to collect a share of the rent of each ryot or other subordinate tenant within the tenure in question.

" When an estate is put up for sale under this Act, for the recovery of arrears of revenue due thereon, if there be no bid, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the collector may purchase the estate on account of the Government, and the Government by such purchase shall acquire the estate free from all incumbrances which may have been imposed upon it subsequent to the time of settlement, and shall be entitled to avoid and annul all under-tenures and to eject all under-tenants with the following exceptions :—

" *First.* Istemraree or mokurruree tenures which were held at a fixed rent more than twelve years before the permanent settlement.

" *Secondly.* Tenures existing at the time of the permanent settlement, which have not been or may not be proved liable to increase of assessment on the grounds stated in Section LI, Regulation VIII. of 1793.

" *Thirdly.* Any tenure created since the permanent settlement, the holder of which may be willing to enter into engagements to pay for the term of the tenure such a fixed rent as the Government may assess upon it, not exceeding in any case two-thirds of the total amount of the ascertained ryotee or mofussil assets comprised in the tenure.

" Provided that no tenure created since the passing of this Act shall be entitled to exemption from annulment under the preceding clause, unless the same were duly registered within one month from the date of the deed constituting the tenure, and at least three months before the date of the sale.

" Provided also that no tenure created since the permanent settlement shall be entitled to exemption from annulment under the third clause of this Section, if it be a tenure the nature of which may entitle each of the holders thereof to collect a share of the rent of each ryot or other subordinate tenant within the tenure in question.

"*Fourthly*. Lands held at rents not less than the rent of good arable land in their neighbourhood, whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk."

The phrase "assignments or other incumbrances," used in paragraph 51 of the minute, is so general that it not only extends to all leases, but mortgages, assignments of rent, annuities, or other liens. In the existing state of the registry law, the provision in question, if adopted, will render all estates at a revenue sale unsalable to private individuals, and will necessarily fall into the hands of Government at a comparatively small price, with the privilege of re-settling the tenures, and thus realise by indirect means the wishes of His Honor as recorded in the 47th paragraph of his minute, which is as follows :—

"The effect of the settlement was however to erect into landowners, men who were mere tax-collectors, and to give them almost unlimited power over all the old village proprietors, thus exposing to hazard a vast mass of long existing rights and creating new and unknown rights of property where they had never been before. The consequences of this (which was quite distinct from the permanent fixing of the Government dues, and need by no means have accompanied that measure) have been deeply injurious to the great body of real proprietors whose rights were sacrificed on the occasion ; and the bad consequences of the measure may be traced at the present day in many of the evils which penetrate into and vitiate so much of the constitution of our rural societies. The only chance of breaking any part of this system down (and every breach in it is a blessing to thousands) is through the purchase of zemindarees by Government at auction sales. Opportunities for such purchases occur indeed but rarely; but when they do present themselves, I would submit that they should never be neglected. Every zemindaree so purchased is a population redeemed and regenerated; and well would it be for Bengal and Behar if there were any prospect of such purchases on a far larger scale."

It is necessary that those who advocate the purchase of zemindarees by Government should shew that the khas mehal ryots are better off than the ryots of private individuals.

Such a change of circumstances is by no means desirable, that Government should be the largest proprietor of zemindarees in the country and reduce the value of landed property to the lowest ebb. Besides, remarks of the kind recorded by such high authority in these paragraphs of the minute in respect to the permanent settlement, necessarily create alarm in the minds of the people and shake their confidence in the proceedings of future Governments.

On the subject of making one law for Government as a purchaser of zemindarees, and another for all other purchasers, several eminent officers spoke of its gross unfairness in the most condemnatory terms.

Mr. Gordon, late a member of the Board of Revenue, remarked :

"Lastly, how could the Government preserve its fair name, if it enacted one law of purchase for itself and another for all other purchasers ? In vain would you tell the natives that it was the improvement of their country you had in view, in promulgating such a law. They would not believe you; and all that moral power, which results from the confidence reposed by the people on the honesty of the British Government, would be gone. If Mr. Halliday would give up all claim of enhancement beyond the sudder jumma on the part of Government also, when it became a purchaser, I would say, in this case too, that such a sacrifice would be contrary to wisdom and sound policy."

Mr. W. Jackson recorded his opinion on the 16th June 1840, being then commissioner of revenue of Moorshedabad, and since a judge of the Sudder Court.

" He (Mr. Halliday) retains however the germ of recovery on the estate reverting to Government, but why this remedy should be withheld on sale (at revenue auctions) to private individuals, I cannot see. It seems, too, an anomaly to give Government as purchaser a right to annul under-leases, and to withhold it from others. There should not be this arbitrary difference."

Mr. Pattle, late member of the Sudder Board, recorded the following opinion on the 30th June 1840.

" All interference between landlord and tenant that has not urgent necessity to justify it, should be avoided in all countries. Interests so inseparably and closely connected will always find in their relative advantages the most desirable security; and the adjustment of their differences, when they cannot be peaceably reconciled, should find in good laws, promptly, cheaply, and well administered, ample redress and protection. Such changes in the law of under-tenures as Mr. Halliday suggests for adoption (could they with due attention to good faith be sanctioned), would be fraught with much more serious evils than those which he anticipates those changes will remove. This important question has already more than once been under the fullest consideration by Government, and as I have understood been always laid aside."

Mr. C. W. Smith, a late member of the Sudder Board, wrote on the same subject as follows.

" Would it not wear the appearance of unmitigated injustice, that while on the one hand the Government aimed a blow at the value of landed property, by making the purchase in very many instances so valueless as to deter parties from purchasing (for such would be the effect of upholding under-tenures of every description), it, on the other hand, reserved to itself that very privilege of annulment and enhancement (with all the facilities and immunities of Regulation VII. of 1822) which it denied to the common purchaser? Would it not be said and would it not also appear, as if Government, finding itself outwardly bound to respect the permanent settlement, took this underhand manner of possessing itself of the landed property?

" Nothing in my opinion would compensate for the loss of that high character as a liberal and beneficent Government, which a measure so fraught with danger, so destructive of the attributes of a moral Government, and which tends to establish so invidious and partial a law between the case of a common purchaser and the Government as purchaser, would undoubtedly occasion throughout the empire."

That the project referred to by the abovenamed officers should have been proposed at first without a clear perception of the inequitable principle on which it is based, is conceivable. But how, in the face of these condemnatory opinions, the Lieutenant Governor can wish to revive his attempt to make a law to favor the interests of Government, and that too in these days of equality of law, is passing strange.

Mr. H. Ricketts, *Member of the Board of Revenue, Lower Provinces.*

Mr. Ricketts considers the expression " the rent of good arable land" to be too indefinite, as arable land varies in value in different villages. He therefore suggests the addition of the words " in the village;" provided that in no case shall increased rent levied under this Section exceed three rupees and eight annas per beegah of fourteen thousand four hundred feet." Messrs. Dunbar and Dampier concur in Mr. Ricketts' objection: the former proposes the addition of words " in that locality," and the latter of the words " within the village or in the vicinity of the village."

With reference to Clauses 1 and 2, Mr. Ricketts observes that it will be necessary on the part of Government to watch closely against fictitious cases of application for registry of tenures under cases I and II.

Considering also the difficulty of proving fraud after several years have passed (Section XLI allows sixty years for setting aside fraudulent registry at the suit of Government), and in order to avoid litigation if possible, Mr. Ricketts would have two classes of such cases; the one merely between the parties and not affecting the right of Government to increased assessment in case of khas management; the other to be special, in which the interest of Government in opposition to the registry requires to be considered, and the collector's order in favor of registry is to be subject to the confirmation of the commissioner: and he would add the two following clauses to Section XXXVI.

"Provided always, that if it be intended that registry of a tenure of the first or second class shall protect the tenure against a re-settlement on the part of the Government, in the event of the estate at any time coming into the possession of Government by purchase under Section XLVII of this Act, such intention shall be distinctly set forth in the applications, which shall be styled applications for special registry; and in such cases registry shall not be allowed without the sanction of the commissioner on the report of the collector, if that officer decide in favor of registry, or on the appeal of one of the parties if the order of the collector be against registry."

"Any party dissatisfied with the award of the commissioner, may, within one year from the date of the award, institute a suit in the civil court for the reversal of the same, and the Government shall be made a party to such suit."

As regards Section XXXVII, Mr. Ricketts observes that it in some respects resembles the plan before advocated by him, but there will be great difficulty in carrying it into effect as it stands. After explaining at length his objections to the provisions of the Section, he thus describes his plan:—

"In a word, I would have no enquiry as to assets and fair proportionate rental when registry is to be good against other purchasers than the Government only; I would have buyers and sellers, owners and farmers, zemindars and tehsildars, without any hindrance, make such bargains as they considered most conducive to their interests; but I would insist on registry with particulars sufficient to show the exact extent to which the proceeds of the estate had been alienated, so that purchasers should know what there was left to buy. When registry has to stand against the Government, then I would have enquiry made as to the extent to which the interests of the Government would be affected by the registry, and forbid it or permit it to be made, with guarantee for twenty years, or fifty years, or ninety-nine, or in perpetuity, with reference to the circumstances of each case.

"The draft makes the collector's orders under Sections XXXVI and XXXVII open to appeal to the superior revenue authorities in usual course, and subject to suit in court if instituted within one year of the collector's decision. When registry is to affect the interests of the Government, that is, to guarantee the stability of the tenure notwithstanding purchase by Government, I would have the registry confirmed by the commissioner. Without this, the collector's order would be practically final. In the cases in which the Government might suffer most, no one would appeal or resort to the civil court. I would not in any case allow appeal to the board of revenue.

"I would substitute the following for Clauses 2 and 3, Section XXXVII of the draft:—

'There shall be two sorts of registry of tenures of the third class, ordinary and special; ordinary when a tenure shall be secured against auction purchasers other than the Government, special whereby a tenure shall be secured against Government also.'

'If the application be for ordinary registry, the provisions of Clause 2, Section XXXVI, shall be held applicable.'

SECTIONS XXXV to XLII.—(*continued.*)

'If the application be for special registry, in addition to the process prescribed in Clause 2, the collector shall institute enquiries with a view to the security of the public revenue. He shall ascertain the extent and capabilities of the tenure to be registered, and satisfy himself that the rent assessed on the tenure is not inadequate, or such as would deprive the Government of its just dues in the event of the zemindaree interest lapsing to the Government under Section XLVII of this Act. Having made all necessary enquiries, the collector shall reject the application for special registry, or sanction special registry with guarantee against re-settlement for twenty-five years, or for fifty years, or for ninety-nine years, or in perpetuity, as he may consider suitable, and shall submit his proceedings for the sanction of the commissioner, whose order on the collector's report or on appeal, should either party appeal, shall be final.'

With reference to Section XXXIX, Mr. Ricketts would have no appeal to the commissioner in cases in which the Government has no interest; and instead of allowing one party to appeal to the commissioner and the other to the civil court, and as practically many of these cases will be disposed of by deputy collectors, he would allow no appeal to the collector, much less from the collector to the commissioner. As to cases of registry in which the Government has an interest and which consequently partake of the character of administrative cases, he would allow an appeal to the commissioner, but no further appeal to the Board. The wording of Section XL is considered by Mr. Ricketts to be extremely obscure.

REMARKS.

The suggestion of Mr. Ricketts, in which Messrs. Dunbar and Dampier concur, if adopted, will be an improvement in the wording of the Section. Perhaps the words suggested by Mr. Dampier should be preferred, namely, " within the village or in the vicinity of the village."

Mr. Ricketts objects that the zemindar will put his near relatives forward to claim registry of talooks; but so long as the assets of the parent estate are left in such a state as not to prejudice the recovery of the public revenue, such registry, whether for *bonâ fide* talooks or otherwise, can be detrimental to none but the proprietor himself, by the diminution of the value of the estate either at a private or public sale of the same. The security of the revenue will depend on the collector's doing his duty by not admitting any tenure to registry, unless satisfied that there exist sufficient reserved assets as beforementioned.

The two classes of registry suggested are, the one for the protection of the interests of private individuals, the other for the benefit of the Government; the latter class registry being subject to the confirmation of the commissioner, and the adoption of two new clauses is accordingly therewith submitted.

But all these distinctions in the law are highly objectionable in principle; besides, the parties who may be desirous to register will invariably prefer to have their tenures registered in both respects, and particularly those who create fraudulent old or new talooks.

The mere registry in the general book will not serve their purpose, as by such registry the estate will fetch a proportionally less price at a revenue sale, which will be a clear loss to the owner without any counterbalancing benefit; hence, as far as his interests are concerned, such general registry is useless, unless he could also obtain special registry of the estate. Thus, whether the talooks be *bonâ fide* or otherwise, the proprietors generally will desire to have them registered in the special registry, in which case the general registry book will remain blank. It is therefore unnecessary to have two sets of registry under two different systems and for two distinct objects. Let whatever plan be thought best and most secure, be adopted for the benefit of all, the Government as well as the people.

SECTIONS XXXV to XLII.—(*continued.*)

An objection is raised by Mr. Ricketts against giving effect to the measure proposed in Section XXXVII; but he has himself suggested the adoption of a plan in accordance with the one hereinbefore set forth in the remarks made in this paper on the observations of the Lieutenant Governor of Bengal.

Mr. Ricketts remarks—"I would abandon all endeavour to ascertain what would be the proportionate, the fair rental, compared with the whole rental of the estate, and confine enquiries to ascertaining that the rental fixed on the tenure to be registered is *suitable*. If the lands are in the hands of the ryots under ordinary circumstances, the rent should be about fifty per cent. on the ryottee rental. If the land is to be held immediately by the lessee without the intervention of any ryots, the rent should be about thirty per cent. of the gross proceeds. When circumstances are peculiar, special enquiry and special terms of registry will be needful.

"By these means the interests of the state may be sufficiently protected in the event of the estate coming into the hands of the Government, and the tedious and expensive process of comparison will be avoided."

In the plan suggested in this paper, instead of fifty, thirty per cent is assumed. Let there be one general rate of fifty per cent. It will answer for the security of all persons concerned, at the same time that it will be easy and practicable to give effect to the plan.

This restriction will no doubt prevent the zemindar who may desire to raise money by letting his estate, village, or land at a light rental on receiving a sum of money down for the lease; but it is in accordance with the provision laid down in the Preamble of Regulation XLIV. of 1793, which runs as follows:—

"The public demand upon the estates of the proprietors of lands with whom a settlement has been or may be concluded under the original regulations for the decennial settlement having been declared fixed for ever, it is to be apprehended that many proprietors, either from improvidence, ignorance, or with a view to raise money, or from other causes or motives, may be induced to dispose of dependent talooks to be held at a reduced jumma, or fix the jumma of such dependant talooks as now exist in their respective estates at an under-rate, or let lands in farm or grant pottahs for the cultivation of land at a reduced rent for a long term or in perpetuity. Such engagements, if held valid, would leave it in the power of weak, improvident, or ill-disposed proprietors to render their property of little or no value to their heirs, and promote vice and injustice."

In respect to jungle booree or other beneficial pottahs, the collector, in consideration of all the circumstances under which the pottah was granted, should be at liberty to admit or reject the tenure. In doubtful cases he can obtain the previous sanction of the superior revenue authority for his guidance, for which, as a mere rule of practice, no provision is necessary in the law.

Mr. Ricketts' proposition for a special rule applicable in the event of estates falling into the hands of Government, is objectionable for the reasons already pointed out in the preceding parts of this paper. Nor is it necessary to advert to the question of appeal by right before the revenue authorities, if such appeal is to be dispensed with, as has been proposed in the previous part of this paper.

MR. J. DUNBAR, *Member of the Board of Revenue, Lower Provinces.*

Mr. Dunbar approves of the purpose, though he doubts the sufficiency of the rules contained in Section XXXVI, which apply to old talookdaree tenures, many of which are of great value. To give all the particulars required to be set forth in the application might be an easy matter; but he apprehends that the grave questions, to which these applications must inevitably give rise, cannot be satisfactorily disposed of by summary investiga-

tion and award, if the proprietor object to the area of land said to be comprised in the tenure, to the boundaries, to the rent and cesses, and the duties incident to it. Unless these points are all clearly and distinctly laid down in the deed by which the tenure was originally constituted, or clearly stated in some other document, it will be quite impossible for any officer to give an award with any just confidence that he is right; and as registration is to give full protection to such tenures in cases of sales of entire estates for arrears of revenue, Mr. Dunbar is clearly of opinion that it should be made dependent on the result of an investigation of a more careful and extended character, or on the establishment of the claim in the civil court. As to Section XXXVII, Mr. Dunbar thinks it will be impracticable to carry out its provisions as they now stand. No collector could, by means of a summary investigation, satisfy himself that a new tenure has been created in good faith so far as the interests of Government are concerned, and that the rent payable by the holder is not less than is fully sufficient to afford a fair proportion of the revenue assessed upon the parent estate. Nothing short of a detailed process, similar to that employed in cases of butwarrah, could give the collector the necessary assurance, and Mr. Dunbar generally concurs in Mr. Ricketts' remarks on this Section, which appear to him very much to the point. With regard to Section XXXIX, Mr. Dunbar would allow appeal to the commissioner, but to the Board only on special grounds.

Mr. W. Dampier, *Member of the Board of Revenue, Lower Provinces.*

Mr. Dampier observes, with reference to Sections XXXVI and XXXVII, that he very much doubts whether any summary enquiry could enable a collector to carry through the objects proposed by them, and he agrees generally with Mr. Ricketts that it would be advisable to make such registration protective against all auction purchasers excepting the Government, and he would have the collector, previous to the sale of any estate, keep the books of registry in a place where they may be available for inspection by all intending purchasers desirous of ascertaining the number and rentals of the protected properties. If the registers are not to be protective against the Government, Mr. Dampier thinks that the necessary enquiries, based on Mr. Ricketts' calculations, might be conducted, without much difficulty, according to Regulations VII. 1822 and IX. 1825. If otherwise, the enquiries would be interminable, though Section XLVII limits the cases in which the Government may purchase. Adverting to Section XXXIX, Mr. Dampier observes that, if Mr. Ricketts' modifications be adopted, appeals to the Board should only be admitted on special grounds, which is the practice now in settlements.

Mr. H. Stainforth, *late Commissioner of Bhaugulpore, Lower Provinces.*

Mr. Stainforth suggests the omission of the words "and whereon no arrear of rent was due on the latest day of payment of revenue as fixed under Sections III and IV of this Act" from the specifications in Clauses 1 and 2 of Section XXXV. Section VI, Regulation VIII. 1793 (Mr. Stainforth observes) shows dependent talookdars were at the time of the decennial settlement deemed proprietors, and their tenures (many of which are very valuable) are like many others transferable, and can at present be brought to sale only under a summary decree for rent due at the end of the year (Clause 7, Section XV, Regulation VII. 1799). The Bill, however, converts these talookdars (if in arrear at the time the estate in which they are situated is sold) into mere lease-holders, and deprives them and others of what they would obtain, if their tenures were sold after paying the rent due thereon, which may be in arrear from causes beyond their control. This alteration of the

law will not only affect them very seriously, but may be deeply injurious to creditors also; and the framer of the Bill (Mr. Stainforth adds) has blown hot on the interests of creditors in Section IX and cold on them in this Section.

Mr. Stainforth objects to Clause 3—first, that it will render purchases of shares less frequent and create numerous gradations of idle middlemen without advantage either to the state or to the cultivators of the soil; secondly, that it will be an injustice to co-sharers to be obliged, without any adequate advantage, either to allow their own shares to be sold or to purchase others in which their wasteful co-partners have created sub-tenures; thirdly, that under-tenants will possibly continue to exclude those who purchase their rights, and thereby tend to prevent realisation of the malgoozar's dues and to throw estates in the hands of Government contrary to the spirit of Section XLVII, restricting the power in Section XXXVI, Regulation XI. 1822. *(See paragraphs* 10 *to* 15 *of his letter, "FurtherPapers No.4," page* 31).

In addition to the above, Mr. Stainforth remarks that the terms under which the tenures (proposed to be exempted by Clause 3) were conveyed may have ostensibly conferred perpetual rights, but the parties knew well that the rights in question were really voidable by sale for arrears of revenue and that the price paid was proportionately small. The Bill, however, proposes to give to the tenant the difference of the price paid and the price which would have been paid, to the loss of his landlord; but to make the measure fair to the zemindars, it seems to Mr. Stainforth that the tenures in question should at all events remain liable to be voided by sale for arrears of revenue, unless the under-tenants intermediately secure themselves by purchasing their continuance.

Considering that the rent of good arable land varies considerably at different places, Mr. Stainforth suggests the necessity of defining where "the good arable land" mentioned in Clause 4 of the above Section is to be held situated.

Mr. Stainforth considers it quite impracticable to carry out the directions in Section XXXVII. The ameen cannot be trusted in such matters, and the collector, if he should do it, must either be a very complying officer or be endowed with supernatural knowledge and power.

Mr. Stainforth would add to Section XXXVIII the words "or by the decision of the superior revenue authorities," and he would alter Section XXXIX by making the awards of collectors open to revision by those authorities with or without appeal.

REMARK.

The objections and observations of Messrs. Dunbar, Dampier, and Stainforth, are the same as have already been noticed in the preceding papers: except on some minor points, it is not necessary further to allude to them.

MR. J. H. YOUNG, *Officiating Commissioner of Burdwan.*

Mr. Young is of opinion that the plan proposed several years ago by the present Lieutenant Governor of Bengal, (namely, that under-tenures should not be in any way affected by a sale, that they should stand as good with the purchaser as with the old proprietor who created them, that the sale in fact should be made subject to all the incumbrances which may have been imposed upon it before or after the time of settlement by any former proprietor, and that if, from the over-creation of such tenures, the value of the parent estate should fall below the amount of the Government revenue, so as to jeopardise the latter, the estate should revert to Government, who would be empowered to make a new settlement of the land,) would be found in practice to work better, and be

more satisfactory to under-tenants, and a much safer principle for the Government to go upon, than the plan of the proposed Bill. *(For his reasons, see paragraph* 18 *to end of his letter, "Further Papers No. 4," pages* 45 *to* 47.*)*

REMARKS.

Mr. Young prefers the amended plan proposed by the Lieutenant Governor of Bengal; but the grave objections to that plan have already been noticed.

Mr. Young considers the question simply as one of security for under-tenants and the Government, but does not refer to its bearing on the country at large. He assumes that the under-tenants will prefer the amended plan. There would be no expense of compulsory registration, no trouble, no measurement, no surveying, no ameens, no mookhtars, no enquiry into crops, assets, and so on, in order to satisfy the collector that the rent of the talook was sufficient to afford its share of the jumma of the estate. It is true the plan proposed in the Bill will require enquiry to be made, but it will be once for all and not subject to litigation in future; while the Government will possess a most valuable record of each district in the collectorate, containing detailed accounts of every tenure in every estate. On the other hand the amended plan of the Lieutenant Governor will leave the rights of under-tenants an open question between the tenants and the new auction purchaser; and as often as sales take place so often will litigation arise, which in the course of time will entail infinitely more expense than compulsory registration, more trouble, more measurement, more surveying, more employment of ameens, mookhtars, and pleaders, and more occupation for the civil and criminal courts, and lastly not a little bloodshed in fights, affrays, and private disputes.

Mr. Young further remarks that, as to the interests of Government under the new law, it strikes him that it leaves too much in the hands of the collector. In other words the collector, a covenanted officer on a high salary, cannot be trusted with the protection of the interests of Government with a proviso in Section XLII of the Bill, that within sixty years from the date of registry the civil court may set aside any registration obtained by fraud (or misrepresentation) to the injury of the Government revenue. Yet the self-same officer is to be vested with almost unlimited power, in many matters, to protect or sacrifice the interests of multitudes of the people.

MR. H. M. REID, *Officiating Collector of Burdwan.*

Mr. Reid would make the registry of under-tenures an optional, not an imperative act, and he would not put any limit on the period within which the old putnee-holders should be required to proceed to registry. He also thinks that a survey and careful record of these old tenures are quite as much called for as a survey and record of the new under-tenures, the rules for which latter, as laid down in the Bill, appear to him equitable; and although the carrying out of them will in many districts, especially in Eastern Bengal, be attended with very great difficulties, the difficulties, he thinks, will not be insurmountable. *(See from paragraph* 10 *to end of his letter, "Further Papers No. 4," pages* 51 *and* 52.)

REMARKS.

Mr. Reid's suggestion, to make the registry of under-tenures optional with the party, may be adopted in regard to the first and second classes of tenures as mentioned in the preceding part of this paper, but certainly not with other classes of tenures. On general principles the registry should be compulsory and applicable to all classes of transferable tenures and long leases.

Mr. Reid thinks that, except in districts in Eastern Bengal, it will not be difficult, with the aid of the revenue survey map, to carry the registration into effect. But in reality it is not the work itself that will be a difficulty, provided the officer be in earnest to complete it.

MR. C. STEER, *Officiating Commissioner of Chittagong.*

Mr. Steer prefers the scheme for the improvement of under-tenures supported by the present head of the Bengal Government, to that contained in the proposed Bill and that emanating from Mr. Ricketts. *(See from paragraph* 12 *to end of his letter, " Further Papers No.* 4," *pages* 55 *to* 58.)

REMARK.

Mr. Steer merely recapitulates the arguments already noticed in favor of the Lieutenant Governor's Scheme it is not necessary to go over the same ground again.

MR. J. S. SPANKIE, *Officiating Collector of Chittagong.*

Mr. Spankie is of opinion that the introduction of a system of general registration will benefit the proprietors of recently created under-tenures, but be ruinous to those who hold lands of the first and second classes. (*See from paragraph* 6 *to end of his letter, " Further Papers No.* 4," *pages* 60 *and* 61.)

REMARKS.

Mr. Spankie thinks that the system of general registry will benefit the post-settlement talooks and not the ante-settlement ones, as, like the case of Lakhirajdars, the *onus probandi* will lie with the talookdars; but in the absence of any documentary title, the previous decrees of competent courts, in regard to the tenure and long possession at a fixed rent, will be admitted as good and sufficient evidence for the title of the tenure. Hence it cannot be difficult for the talookdar after sixty-five years' possession to establish at least a title by prescription before the collector.

MR. F. B. SIMSON, *Officiating Deputy Collector of Bullooah.*

Mr. Simson has no objection to making the complete registration of all old tenures general, but he is averse to making such registration compulsory. Compulsory registration he would have only in respect of tenures created less than twelve years before the passing of the present Bill, leaving tenures of older creation to benefit or not by registration as may seem best to their owners. As to Section XXXVI, he thinks that the words "fix a day" in Clause 2 may be omitted with convenience to collectors and without injury to the other parties concerned; and with reference to the additional rule in Section XXXVII, requiring collectors to commence measurement immediately, Mr. Simson is of opinion that it would be better to wait till the answer of the proprietor of the estate as to his objections to registration is received and (if necessary) decided by the collector. Mr. Simson then proceeds to notice the effect to be given to registered tenures in the event of sale. *(See from paragraph* 16 *to end of his letter, " Further Papers No.* 4," *pages* 64 *to* 67.)

SECTIONS XXXV to XLII.—(*continued.*)

REMARKS.

Mr. Simson objects to the compulsory registration, except in the case of new tenures created within twelve years before the passing of the Bill. The question as to compulsory or discretionary registry has been fully discussed in previous parts of this paper.

The other suggestions are merely verbal. That regarding the time for commencing the measurement of the tenure is worthy of consideration.

MR. E. A. SAMUELLS, *Commissioner of Cuttack.*

Mr. Samuells observes that, if Clause 4, Section XXXV passes as it stands, a large proportion of the land in Bengal will speedily be held rent-free. (*See paragraph* 22 *of his letter, " Further Papers No. 4," page* 77). Mr. Samuells gives several reasons for objecting altogether to the principle embodied in Section XXXVII. In matters of detail, however, if he were compelled to choose between it and the scheme of the Bengal Government, he should prefer the latter, which has the merit of being more complete, inasmuch as it secures every under-tenure up to a certain point without any action on the part of the tenants, is perfectly simple and inexpensive in its operation, and does not endanger the Government revenue. But on two points he has the same objection to the Bengal Government plan as to that of the Bill. It affects, equally with the latter, the value of zemindary property and tends to produce a general fixity of tenure, in addition to which the absence of registration in the Government scheme would inevitably give rise to many frauds. The problem, then, which has to be solved, is how to afford relief to an important class of middlemen without interfering with the rights of others, endangering the Government revenue, or erecting a barrier to improvement in the shape of a class of pauper landholders. This, it seems to him, will be best accomplished by a modification of the plan of the Bengal Government; to obviate objections to which plan and at the same time afford security to under-tenants, Mr. Samuells would recommend that it should be competent to all under-tenants, in conjunction with their zemindars, or in the case of ante-settlement tenures or tenures the rents of which have been permanently fixed by law or by the decision of any competent court, then in conjunction with the holders of such tenures, to present a petition to the collector, setting forth all the particulars regarding their tenures which the present law requires in such cases, and praying tha the tenures should be secured by registration against all auction purchasers except the Government; that the collector should, upon receipt of such petition, issue notices in all the usual places and in the usual manner, making known the substance of the petition; and in the event of no objection being made by any third party, that he should register the tenure in a book to be kept for the purpose against the name of the zemindary in which it might be situated; that this registry should always be open to the inspection of intending purchasers a auction sales; and that all tenures so registered, and no other, should stand good against the auction purchaser. Provided that, if the estate should not command at auction a price equal to its arrears of revenue, it should be in the power of the collector, after giving one month's notice to the tenants, to expose it to auction a second time, and in the event of the bids still failing to cover the arrear, to purchase it on account of Government and to annul all leases and tenures whatsoever. Should any objection be made to the registry by a third party, the collector might be directed to suspend his registration of the tenure for the space of six weeks from the date on which such objection might be filed, and the moonsiff or the judge might be authorised, on application being made to them within six weeks, to grant a provisional injunction against the registry and to decide in a summary manner upon the applicant's objections, confirming or withdrawing the injunction as he considered the objections to be valid or otherwise. (*See paragraphs* 8 *to* 21 *of his letter, " Further Papers No. 4," pages* 70 *to* 76.)

REMARKS.

Mr. Samuells' letter on this subject is most valuable.

The provisions for registry and protection of under-tenures against revenue sales are intended to be limited to the permanently settled estates and *not* made applicable to periodically settled ones, or resumed mehals or churs in a similar situation: the words of Section XXXV therefore require to be modified. It is also requisite that it be determined what right, after the passing of this Bill and the repeal of Act I. of 1845 and other laws, shall be acquired by the purchasers of periodically settled estates or mehals within the presidency of Bengal when sold for arrears of revenue, and by what principles they and the fiscal and judicial officers are to be guided in respect to disputes between new purchasers and their tenants.

Mr. Samuells appears to have overlooked, when he indited his observation in paragraph 11 of his letter, that the adoption of either of the plans would have the effect of depreciating the value of the estates to a very serious extent.

The plan proposed by the Lieutenant Governor of Bengal would certainly produce the effect, by inducing the ex-zemindar to have recourse to fraud and chicanery, and such other courses as have already been indicated in the preceding part of this paper.

Mr. Grant's plan may likewise produce in some measure the same effect in a different manner. The zemindar, on receiving large sums as bonus, lets out his estate, either whole or in part, to divers persons on insufficient jummas, and thereby reduces the value of his estate; and that which was worth a lakh of rupees before the creation of the tenures, cannot now sell by private contract for more than 50,000 rupees.

The estate supposed, being brought to sale either intentionally or otherwise for arrears of revenue, the purchaser knowing that, under the present law, he will acquire the estate free from all incumbrances including the sub-leases, readily pays its full value of a lakh, and secures the proper return of his capital at the expense of the innocent under-tenants, the dishonest ex-zemindar having already profited by his fraud.

Mr. Grant's plan does not look with favor on the interests of either party or even on that of Government, but simply provides that, if a zemindar has reduced the value of his estate by previously receiving a consideration for the same, he should be content with that reduced value, and adhere to his contract, instead of injuring his under-tenants, who purchased his rights from him on payment of valuable consideration. Surely the reduction of the value of the estate from such a cause cannot be a ground of complaint on the part of the ex-zemindar or the people at large.

The observation in paragraph 18 of Mr. Samuells' letter is just and proper. The European planters are anxious for the security of talooks or farms being intermediate tenures between zemindars and cultivators, evidently because they find a difficulty, in a majority of cases, in purchasing zemindarees either from want of capital or other causes, but obtain with ease some sort of intermediate tenures and become middlemen between zemindars and cultivator.

If such tenures be secured against revenue sale, as proposed by the Bill, the planter supposes that he will permanently acquire, as is very justly remarked by Mr. Samuells, " a power over the ryots which may enable him to induce them to cultivate indigo for his manufactory; and if the ryots could secure themselves by registry or otherwise against enhancement of rent, it is not unlikely that they might prove their independence by declining to sow indigo, and tendering their rent of a rupee or two per beegah instead. I do not think that indigo planters would wish to see the ryots as independent of them as they themselves are (or would be under this Bill) of the zemindar."

SECTIONS XXXV to XLII.—*(continued.)*

The fear entertained by Mr. Samuells in the first part of paragraph 14 of his letter, will appear not well grounded, when it is considered that Government is to have power, at any tim e within sixty years, to institute a suit on the ground of fraud to the injury of the Government revenue, and cause the registry to be cancelled.

In respect to the fraud committed in the lakhiraj tenure, the fault entirely lies with the public officers. The rules promulgated by the laws of 1793 and subsequent years were well calculated to check fraud of every description, had they been properly carried into effect by the public functionaries whose duty it was to do so. Look at the lakhiraj *tydads* of the Burdwan district. The lakhirajdars filed upwards of sixty thousand with their original *sunnuds*, but the successive collectors neglected to register them as the law required, or to return the *sunnuds* to the parties who had filed them, but left them all as a legacy to white ants and other insects. If public officers will neglect to perform their duties required by the Bill in the same manner, it is better to leave the propriety of improving any institution out of the question. "Let things stand as they are, nature will take her own course to adopt a healing remedy."

The procedure suggested by Mr. Samuells at the concluding part of the paragraph, namely, to vest the collector with judicial powers in respect to enquiries and to examining parties and witnesses upon oath or solemn declaration, may with advantage be adopted, and this can be done by introducing a short Section as a joinder to Section XXVI of the Bill.

The only new material point in the scheme suggested by Mr. Samuells is that application for registry should be made in conjunction with the zemindar. This is impracticable, and will subject the under-tenants to extortion, annoyance, and trouble.

The desire to exempt the Government purchase appears to be a favorite point with the public officers. It is hardly necessary again to show how entirely opposite the suggestion is to sound principle and subversive of public policy.

The objection to Clause 4, Section XXXV, is inconsistent with the wording of the Clause, as it is provided in that Clause, that the exception in question will not apply in cases where the land is held at an unfair rent, and where it shall not have been held at a fixed rent equal to the rent of good arable land for a term exceeding twelve years. If approved, it may be added : " such lands continuing to be used for the purpose specified in the lease."

MR. H. V. SCHALCH, *Officiating Collector of Balasore.*

Mr. Schalch is of opinion that the registration of all under-tenures granted previous to the settlement, should, as proposed by the Bill, be rendered compulsory to obtain their exemption under Section XXXV; but he would extend the period allowed for registration, to five years at least from the promulgation of the Act, so as to give time for its provisions to be generally known to the many ignorant and indigent holders of such tenures. Lest, also, the charges and expenses incurred in the survey and local enquiry, required to be made regarding under-tenures granted subsequent to the settlement, should be so considerable as in some cases to deprive under-tenants of the benefit resulting from the proposed regulation, he would allow the under-tenant to register his lease with a view either to permanent or provisional protection. To obtain the former, he must follow the course prescribed in Section XXXVII, and incur the expense of the survey and the other necessary local enquiries; but to insure the latter, no survey need be made, and the under-tenure might be protected from annulment, unless the estate under these conditions failed to sell for the amount of arrear due on it, in which case alone the provisionally registered under-tenure should be liable to be voided. The summary enquiries prescribed in Sections XII, XXXVI, and

SECTIONS XXXV to XLII.—*(continued.)*

XXXVII should, Mr. Schalch thinks, be judicial, and the collector be empowered to administer oaths and compel the attendance of witnesses and the production of accounts, &c. As the enquiry is summary and subject to the revision of the civil court, an appeal to the superior revenue authorities is not, in his opinion, advisable; as, if it be not final, it will only serve to increase the expense and delay the final decision, which rests with the civil court, to whom any party dissatisfied with the collector's decision should at once be forced to have recourse. For the same reasons he would allow no appeal to the superior revenue authorities from the collector's decision regarding registration, unless on the grounds of "the good faith on which a tenure may have been created, so far as the interest of Government revenue is concerned," or "the adequacy of the rent for the security of that revenue," these being points on which no appeal can be made to the civil court. Mr. Schalch, further, does not agree in the objection that protection is intended to be afforded only to tenures granted by the proprietors, and not tenures created by talookdars or others holding under the proprietor; for the reasons for granting protection by means of a system of registration, apply equally to both, and there would be no greater difficulty in registering the latter than the former. The protection granted in Section XXXVIII to talookdaree tenures, pending the summary investigation of the collector in case of the sale of the parent estate for arrears of revenue, should, he thinks, be allowed only where the price offered for the estate, when sold with reservation of the under-tenures, covers the amount of arrears; if the price be less, the estate should be disposed of unencumbered by the act of the defaulter, otherwise there may be no means of recovering the Government revenue until the completion of the survey or other enquiries, which may extend over a considerable period. Nor does he see any reason why only under-tenures in permanently settled estates, and not similar holdings in estates not permanently settled, should be protected from annulment up to the expiry of the current settlement. (*See paragraphs* 17 *and* 18 *of his letter,* "*Further Papers No.* 4," *page* 81.)

REMARKS.

Mr. Schalch, approving of the compulsory registration of ante-settlement tenures, merely suggests the extension of the period of registration from three to five years. Perhaps it would be better to give power to the Lieutenant Governor, on the usual terms, to extend the time, not exceeding another three years, in such districts as he may think requisite.

The multiplication of appeals is no doubt objectionable, and it may be dispensed with, as suggested by Mr. Schalch in the 16th paragraph of his letter.

Mr. Schalch assumes, in the 15th paragraph of his letter, that the protection intended to be given to the tenures granted by the proprietors is also applicable to those created by dependent talookdars, or any other holdings under the proprietor.

The author of the Bill did not intend to include such subordinate tenures in his registry Section, nor was it necessary to do so for their protection on the sale of a parent estate for arrears of revenue. For, if the dependent talook of an estate is protected by having it registered in the manner directed by the Bill, it necessarily follows that all subordinate tenures in the said dependent talook are likewise protected; they in fact cannot be annihilated by the revenue sale when their superior stands firm by virtue of the provisions of the registry.

The question of protection of such under-tenures after the sale of the dependent talook for its own arrears of rent, is another question quite foreign to the object of the Bill. Such sale will take place not under this law but another; and when any modification of that law is proposed, the question may be considered in all its bearings. It is a mistake, common to many, to mix up the two questions together, when there is no connection between them, and the reason for affording protection to one class of tenures does not apply to the other class.

The unsoundness of the policy of granting two descriptions of protection to under-tenants and registering and entering them in two different registers has already been shown. It is not necessary to renew the discussion here.

MR. R. N. SHORE, *Collector of Cuttack.*

Mr. Shore would greatly hesitate before applying the provisions of the 35th and following Sections to districts which have not been subjected to the revenue survey operations. In cases where the sudder jumma of an estate is so light as to allow of a considerable margin without the necessity for making very minute enquiries, or where the estate is not a large one and the under-tenure embraces a large portion of it, or where it is so compact and well defined that the survey records will suffice without additional measurements, he sees no objection to registration being granted without danger to the Government revenue, or much expense and harassment to the parties seeking it. But, to meet less favorable cases, he would suggest that it be optional with applicants either to register under the present provisions, whereby they will obtain complete protection at some expense, or under those formerly proposed, whereby they would obtain protection without any expense at all, but subject to revocation in the event of the parent estate being bought in by Government. Mr. Shore further considers it worthy of consideration, whether, instead of the provision attached to Section XXXV, the benefit of a registration similar to that of under-tenants might not be extended to resident hereditary cultivators, in which case no very extensive or minute enquiry will be necessary, as the village rates can always be ascertained with sufficient accuracy to protect the Government revenue.

REMARKS.

The first part of Mr. Shore's suggestion about not applying the protection clauses to the periodically settled provinces is perfectly just and proper, as has already been noticed with reference to the remarks of the Lieutenant Governor of the North-Western Provinces.

The provision in Section XXXV is sufficiently protective of khoodkasht and kudeemee ryots, or resident hereditary cultivators: it is not necessary to make any further provision.

MR. A. GROTE, *Officiating Commissioner of Nuddea.*

Mr. Grote remarks, with reference to Section XXXV, that he questions if the last of the conditions specified in Clauses 1, 2, and 3, can be fulfilled, and that it will cause harassment to the under-tenants and enable the purchaser to profit by a default on the part of the under-tenant. He has no objections to offer to any of the provisions of Section XXXVI. But, in carrying out the additional rule prescribed in Section XXXVII, he apprehends difficulty. In his opinion, a clear understanding of what is the prevalent character of the under-tenures most requiring protection, and precise information as to how this character varies in different districts, are absolutely necessary before such decisive and final provisions as these, can safely be made law; and, pending the collection of such information, he should prefer seeing the proposals of the Bengal Government introduced into this Bill. *(See paragraphs 11 to 17 of his letter, "Further Papers No. 4," pages 85 and 86.)*

REMARKS.

Mr. Grote, in paragraph 11 of his letter, objects to the last of the conditions specified in Clauses 1, 2, and 3 of Section XXXV, namely, "that the non-payment of rent on the latest day of revenue payment will

deprive the holders of registered tenures of the benefit of protection. He asks—why should the purchaser profit by a default on the part of the under-tenant? for the default, if it occurred, was an injury to the "previous owner." The condition was evidently proposed in order that the under-tenant may be careful not to injure the previous owner or derive an advantage from his own wrong; he must himself be innocent and come with clean hands, ere he can claim any protection from the law. Besides, the purchaser will have opportunity enough, before sale, to know what are the tenures in the predicament of having forfeited the protection of the law; and with that knowledge he will naturally bid higher in proportion to the actual value of the estate, and the "previous owner" will benefit by the higher price paid for it, in which the under-tenant, who by his default committed an injury against the "previous owner," has no right to share. Mr. Grote appears not to have viewed the question in this light.

From paragraphs 13 to 17, Mr. Grote points out difficulties in carrying the plan of registry into effect, particularly in the 24th paragraph: but these difficulties are not insurmountable; and where the collector will be unable to satisfy himself as to the validity of the tenure for registry consistently with the interests of the Government, he will reject the application. Mr. Grote may justly remark, as he does in paragraph 16—"no doubt, if these provisions work well so as to admit of compliance without risk to Government, with even a moiety of the applications for registry which will be given in, the country will have made a great stride."

It will be necessary to vary the margin of percentage in different districts, as the Board and the local Government may think proper. The fifty percentage cannot be made a general rate as the condition to entitle to registry; for instance, in the 24-Pergunnahs scarcely a zemindar has a profit above twenty-five per cent after paying the sudder jumma. The same observation may be applied to the districts of Hooghly, Burdwan, and Midnapore, with some exceptions.

MR. E. H. LUSHINGTON, *Officiating Collector of Nuddea.*

Mr. Lushington observes with respect to Section XXXV, that, after registration has been completed, the estate (whether of the first, second, or third description) may be lost in the event of any arrear of rent being due on the latest day of the payment of revenue as fixed under Sections III and IV. These arrears, he adds, might be occasioned by an error in the calculation, or consist of a trifling balance; and cases may occur in which it will be difficult for the holder of a tenure to prove that he was not in arrears—at all events he may be involved in litigation. With reference to Section XXXVI, Mr. Lushington doubts, notwithstanding the advantages of registration, whether many holders of old talookdaree tenures would undertake the labor and expense it would necessarily involve, as they would almost invariably have to encounter the opposition of the owner of the parent estate; and if they failed in satisfactorily establishing their claims, the zemindar would avail himself of all the information thus gained, and ultimately the holders of these tenures would have to defend their rights in the civil courts. He also thinks that great difficulty would attend the carrying out of the 2nd clause of this Section: "summary investigation" and "reasonable time" being expressions which depend for their force on the mind of the collector; there will be perpetual appeals on these points to the commissioner, who will also have his view of "summary" and "reasonable;" and thus it will be scarcely possible for an owner of a tenure, applying for registration and meeting with opposition, to look forward with any reasonable hope to its accomplishment. Section XXXVII, as Mr. Lushington understands it, refers only to those of the third class described in Section XXXV, but does not include secondary and lower classes of under-tenures, such as durputnee and seeputnee. The difficulties of registration under this Section (XXXVII) are so much greater than under the preceding

Section, as to render it impracticable. Registration, to be serviceable, must be simple and also compulsory, because no great improvement can be carried out in this country unless the people, in the first instance, are forced to adopt it. On these grounds he would recommend that every zemindar, within six months from the passing of this Act, should be compelled, under penalty, to furnish a list descriptive of all the tenures in his estate with jumma-wassil-bakee duly attested. This would at once place the collector in full possession of every particular regarding the assets of every estate, and check any opposition the zemindar might hereafter be disposed to shew, by either denying the existence of any under-tenure or disputing its jumma, or that of any jotedar. On the receipt of this list, the collector should immediately serve notices on the several classes of proprietors described in Clauses 1, 2, and 3, Section XXXV, and enforce the registration of their tenures by subjecting them to the penalty of non-exemption in the event of the sale of the parent estate for arrears of revenue, and also denying them the privilege of suing their under-tenants under the summary suit laws—the enquiry previous to registration to be limited to the simple fact of possession. No injury would accrue to the zemindar or the holders of under-tenures by this speedy disposal of the question: it would greatly simplify the collector's proceedings, while the civil courts would be open for the adjudication of any fraud which might be alleged to have been committed. The object of registration being to protect the holders of all under-tenures given in good faith and at a fair jumma, and at the same time to defend the interests of the Government, it appears to Mr. Lushington that the latter are sufficiently protected by Sections XIV and XLI, and will not therefore be jeopardised by the summary enquiry proposed by him; whilst protection to the former would be given at once without much trouble and at little cost beyond the registration fees. (*See from paragraphs* 7 *to end of his letter, "Further Papers No.* 4, *pages* 89 *to* 91.")

REMARKS.

Mr. Lushington's remarks are limited to three points, namely:—

1st. Non-payment of rent by the under-tenant makes him forfeit the benefit of protection under the provisions of the registry law.

2nd. The difficulty of summary investigation followed by perpetual appeals to the commissioner.

3rd. That every zemindar should be compelled within six months to file, under a penalty, a list descriptive of all the tenures in his estate with jumma-wassil-bakee; and with reference to it, notices are to be served on under-tenants to enforce the registration of their tenures, by subjecting them to the penalty of non-exemption and denying them the benefit of the summary process for the recovery of rent.

The first and second points have already been disposed of in the observations on Mr. Grote's remarks.

In respect to the third point, the plan is unjust. The registration of the under-tenures is for the benefit of the under-tenants. Why should a zemindar be compelled to file the papers? If the former do not avail themselves of the benefits of the provision, they lose the benefit of the summary protection. This ought to be a sufficient inducement to the under-tenants to secure registry by voluntary application.

MR. F. A. LUSHINGTON, *Officiating Collector of the 24-Pergunnahs.*

Mr. Lushington considers the carrying out of the rules under Sections XXXVI and XXXVII as transforming the collector's cutcherry into a civil court, and as calculated to take up the entire time of the collector with investigations as to the rights of every petty talookdar in the zillah. In the 24-Pergunnahs very

few holders of tenures described in Section XXXV, possess documents defining their rights, and no further definition is granted than the entering of so much land against such and such a ryot's name in the jummabundee papers, and upon this frail tenure has the land gone down from father to son in the same families, but no separate pottah was granted by former zemindars to the holders of such lands, who, nevertheless, in cases of arrears of rent, in accordance with the established practice of the zillah, sell these tenures under Act VIII. of 1835, which sales are recognised by the civil courts. These rights are, moreover, frequently sold by the holders thereof in private transactions; it remains, therefore, to be considered whether the Board of Revenue will recognise these amongst the shikmee tenures designated in Section XXXVI. Further, it appears that the putnee tenures under Regulation VIII. of 1819 are not specifically mentioned in the list of those entered in Section XXXV of the new Act; and though, from the specification of the particulars that the application for registration is to contain, it may be presumed they are included in the category, yet it would be more satisfactory to have the point defined. Mr. Lushington points out an apparent discrepancy between Sections XXXVI and XXXIX. The former provides for a reference to the civil court, while the latter declares the awards of collectors to be open to appeal to the superior revenue authorities. With reference to Section XLI, it appears to Mr. Lushington that the intervention of the civil courts is unnecessary, and that, as in cases of questioning fraudulent butwarras under Regulation XIX. 1814, the Board of Revenue should be empowered to nullify a fraudulent or otherwise erroneous registry, and without specifying any limit within which the discovery should be made.

REMARKS.

Mr. Lushington refers to the difficulties of investigation or inquiry and the labor which will be thrown on the collector; but if these reasons be admitted, no reformation in any institution and no measures for the security of life, property, or liberty of the people, can be introduced in this country.

The question of summary appeal to the revenue authorities being under consideration, the modification suggested may be included in it.

BABOO SIB CHUNDER DEB, *Deputy Collector of the 24-Pergunnahs.*

Baboo Sib Chunder Deb has submitted his opinion on the practical working of Sections XXXVI and XXXVII, (see "Further Papers No. 4, pages 98 to 100,) which, Mr. Grote thinks, carries weight with it. This officer's view of Section XXXVII, Mr. Grote observes, is nearly the same as his own. He brings forward, moreover, objections even to Section XXXVI, being of opinion apparently that here also the interests of Government require to be watched. Mr. Grote says he knows the ticka tenure to which the Baboo alludes, and is aware that transfers of lands have taken place in the manner described; but he does not think that the tenure prevails to such an extent in any one estate as to cause apprehension of loss of revenue by the admission of applications for registration, and there is Section XLI to enable Government to cancel a registration fraudulently effected, if the means of proving fraud are available. It might happen, adds Mr. Grote, that the owner of an estate may create a new tenure on terms exceedingly favorable to himself, and succeed in imposing on a careless and superficial collector and in registering it as an old tenure. It might also happen that this incumbrance would affect the capability of the estate to bear its public assessment. But the case, observes Mr. Grote, is an extreme one, and the fraud would be detected whenever the estate came to sale.

REMARKS.

Baboo Sib Chunder Deb, from paragraphs 1 to 5 in his letter, after recapitulating the scheme of registry contained in the Bill, in paragraph 6 assumes, in regard to ante-settlement tenures, that, "if the claim is estab-

lished, the registry of the tenure shall be allowed without any enquiry as to the adequacy of the rent payable by the holder," but it seems he has overlooked the provisions of Sections XLIX, L, and LI, Regulation VIII. of 1793. With reference to the direction of that law, any enquiry as to the adequacy of the rent payable by the holder of the tenure, is perfectly uncalled for.

The circumstance of tickadary lands of the 24-Pergunnahs being recorded in the jummabundee papers dated 1190 B. S., is of little consequence. Supposing these papers to be genuine and well authenticated, which in many cases has been doubted by the civil courts, yet the entry in them can only establish a right of occupancy by prescription in favor of the holder of the tenures, and not the fixed nature of the rent or the rate of rent of the land in his possession.

This appears from the decision of the Sudder Dewanny Adawlut, dated 24th March 1831, by Messrs. C. Smith and A. Ross—Reports, vol. V., page 102 :—

"An under-tenant of mal land, in the 24-Pergunnahs, repelled the claim of the talookdar to levy enhanced rent on his tenure at the improved pergunnah rate, by pleading exemption from increase on the rent settled by the Government survey and jummabundee of 1190 B. S., and continuous payment at that rate. On proof that the local rate had risen, and on defect of proof by defendant as to the legal fixed character of the rent heretofore by him paid on his tenure, his plea is overruled, and the right of the superior landlord to proceed to assess the tenure at the improved customary rent under Regulation V of 1812, is awarded."

Such being the law, the fear expressed by the Baboo in paragraphs 7 to 9 must vanish, as the registry of these tenures can only secure the right of occupancy by prescription in favor of the holder of the tenures, and no more; and whether they are now held by the sons or near relations or on adequate or inadequate rents, or the integrity of the tenures has been changed by substituting lands of good quality for bad ones, or any other fraud has been committed, is of little consequence, the tenures being clearly liable to assessment by auction purchasers at the improved customary rents for the time being.

The Baboo has fallen into another mistake in paragraphs 10 to 12 in respect to post-settlement tenures, namely, that the whole of the parent estate must be measured and surveyed in order to ascertain a fair proportion of the rent chargeable on the tenure offered to be registered. It has been explained in the preceding parts of this paper that such proceedings are neither contemplated nor necessary.

The 13th and 14th paragraphs of the Baboo's letter bring forward the question of the ijmalee possession of the proprietors and tenants holding under them. It is easy to avoid such difficulty by declining to register such tenures under the general discretion vested in the collector in respect to registry.

Mr. R. F. Hodgson, *Collector of Behar.*

Mr. Hodgson is of opinion that very few tenures referred to in the 1st and 2nd Clauses of Section XXXV and possessing the peculiar qualifications enumerated in Section XXXVI, are to be found in Behar—talookdaree tenures distinct and apart from those referred to in Regulation II. of 1819 may exist in Nizamut mehals, and, if so, the option of effecting their registration is very properly conceded. It also seems to him very desirable that farming leases and tenures of the description referred to in Clause 3, should be secured against any interference on the part of a purchaser of the parent estate; but at the same time, he thinks it possible for the collector to be deceived in the enquiries he is called upon to make under Section XXXVII. The interests of Government are doubtless sufficiently secured by the power to sell an estate in case of arrears, but there is nothing to prevent

a fraudulent landholder, possessing two mouzahs constituting one lot or estate, both nearly of the same area, but of unequal value, from effecting a fictitious transfer of the good mouzah to his wife or son at half of the sudder jumma of the whole estate and obtaining registration for it under the proposed Act. He might then wilfully permit the estate to fall into arrear and allow it to be sold; in which case the purchaser, who is bound by the Act to respect and not to interfere with the registered tenure, would find himself in the position of having to pay the same amount of Government revenue for a bad mouzah that the fraudulent landholder does for a good one, and though, by a regular suit under Section XLI, the lease might be annulled, yet it would be a work of time. Mr. Hodgson entertains no doubt but that frauds of this and other unforeseen natures will arise out of the proposed Act and cause a great deal of trouble.

REMARKS.

Mr. Hodgson generally approves of the scheme, but fears that fraud by transfers *benamee*, on inadequate rent, or of other unforeseen natures, will arise out of the proposed Act and cause a great deal of trouble; but if the revenue officers act with diligence and alacrity, no such fear need be entertained. Is not sixty years an ample time to discover fraud, and protect the interests of Government?

MR. F. A. E. DALRYMPLE, *Collector of Dinagepore.*

Mr. Dalrymple sees no objection to the provisions of the Bill regarding the first and second descriptions of tenures, which are already in some measure protected by the conditions of the permanent settlement; the difference being that the permanent settlement consists simply in a declaration in favor of all such tenures generally, whereas the provisions of the Bill are calculated to identify them. But, with reference to the third description of under-tenures (namely, those created since the permanent settlement), while admitting the necessity for protecting them in the event of a sale of the parent estate, he doubts whether the scheme proposed in the Bill, however good in principle it appears to be, would be practicable, from the difficulty of measuring and surveying the under-tenures as required by Section XXXVII, and of the collector satisfying himself that the rent payable by the holder bears a fair proportion to the revenue assessed upon the parent estate, and of the enquiry regarding the assets of the under-tenures. He therefore prefers the scheme formerly proposed by Government, namely, that "all under-tenures in an estate, without exception or enquiry, should be allowed to hold as good against an auction purchaser as they were against the former proprietor, as long as the parent estate should be salable at a price that would cover the arrears of revenue due from it; that, as soon as the parent estate should fail to be salable at such a price, it should be forfeited to Government." This scheme will enable the Government to repair the injury inflicted by the permanent settlement of Bengal, for the lapse of the zomindaries for arrears of revenue will afford the Government the opportunity of restoring to the actual cultivators of the soil, the status of which that settlement unfortunately deprived them, and which was transferred to the mere tehseeldars of the Mogul Government, who were mistaken for a body analogous to the landed proprietors of England. Mr. Dalrymple is aware of the outcry which is raised against any measure supposed to have the slightest tendency to trench upon that settlement; but to remove evils of a system acknowledged to have proved most disastrous to the great body of the people, is, in his judgment, not merely advisable, but a duty imperative upon Government.

REMARKS.

Mr. Dalrymple approves of the scheme as far as the first and second classes of tenures are concerned, but has fallen into the common error already adverted to in this paper in regard to the third class of tenures—the diffi-

culty of investigating, measuring, and surveying the tenures, and ascertaining if the rent payable by the holder bears a fair proportion to the revenue assessed upon the parent estate, and the necessity of an increase of establishment to accomplish the object.

The scheme proposed by the Lieutenant Governor of Bengal, to which Mr. Dalrymple gives a decided preference, is liable to so many objections that it need not be further alluded to here. Be it, however, remarked that it would be less objectionable, if an estate offered to sale do not fetch the price sufficient to pay off Government arrears, that the estate, *instead* of being forfeited to Government free from all encumbrances as far as post-settlement tenures are concerned, as proposed by the Lieutenant Governor of Bengal, should again be put up for sale without the encumbrances; and if there be still no bidder, the Government may purchase at the upset price of the amount of the arrear. This will secure the Government revenue, as well as remove the odium to which the Government purchase scheme is liable.

The allusion to the status of the zemindars under the Mogul Government, is irrelevant, as the fixity of the permanent settlement rests, not on any questionable point of the kind, but on the faith of the British Government.

MR. E. C. CRASTER, *Officiating Deputy Collector of Maldah.*

Mr. Craster, adverting to Sections XXXVI and XXXVII, observes, as to the registration of new talookdaree tenures and farms, that it is not mentioned who is to bear the expense of survey and measurement, nor is any provision made for the performance of the work by competent persons. But he sees no necessity whatever for the provision which prescribes a local enquiry as the means by which Government interests are to be protected against any fraud in the creation of registered under-tenures, and he takes exception to the provision which declares registered under-tenures not liable to annulment on sale of the parent estate to Government. *(For his reasons, see paragraphs* 19 *and* 20 *of his letter, "Further Papers No.* 4,*" page* 115.) In lieu of those provisions, he proposes to substitute a clause declaring all under-tenures liable to avoidance in case of the estate being thrown on the hands of Government, and to allow the mode of registration prescribed in Section XXXVI to be adopted in all cases.

REMARK.

Mr. Craster makes no suggestion that is not to be found elsewhere.

RAJAH SUTT SHURN GHOSAL.

Rajah Sutt Shurn Ghosal objects to the protection held out by the Bill to the holders of under-tenures created since the settlement, as being contrary to the long-established principle inculcated and upheld by various Regulations and Acts of the Government, and likely to be a source of many fraudulent transactions, and as tending much to endanger the realisation of the public revenue; and he proposes that the tenures in question be declared voidable by the sale purchasers. *(See paragraph* 2 *of his Petition, dated* 19*th September* 1856.) He suggests also the substitution of the words "of an estate or share of an estate" for the words "of an entire estate" between the words "purchaser" and "sold" in the beginning of Section XXXV, and for the words "of an estate" between the same words in the beginning of Section XLII.

SECTIONS XXXV to XLII.—*(continued.)*

REMARKS.

The Rajah objects to the protection held out to the post-settlement tenures; but as he does not attempt to refute the special reasons which gave rise to the scheme and the grounds set forth in support of it, no observations can be made on his remarks.

The suggestion to put the auction purchaser in possession of the estate is one worthy of consideration, and has already been noticed in a preceding part of this paper.

MR. THEOBALD, *Secretary to the Indigo Planters' Association.*

Mr. Theobald has made some objections to Sections XXXV to XXXVIII. *(See "Further Papers No. 2," from page 7 to end.)*

REMARKS.

Mr. Theobald remarks that, according to his information, tenures (istemraree and mokurruree) were all ascertained and recorded at the time of the resumption proceedings. He has certainly been misinformed.

As the registry of these ante-settlement tenures has nothing to do with the resumption proceedings, perhaps Mr. Theobald's informant referred to Mr. Vansittart's Behar registry book of 1770, which is commonly called Hoshear Jung's registry, and which comprises all mouzahs included in each pergunnah of the province, and also all mokurruree and istemraree tenures or mehals. This registry will, no doubt, greatly assist the formation of the one contemplated by the Bill, but in the province of Behar only.

Mr. Theobald's objections are:

1. The tenure, after due registration, will still be jeopardised if the zemindar deny the fact of the payment of the due rent on or before the last day of the payment of the revenue to Government; and there is no provision in the Bill for judicially ascertaining the fact of default on the part of the registered holder of the tenure.

2. The difficulty, annoyance, and extortion the holders of the post-settlement tenures will be liable to in the course of the measurement and summary enquiry which their tenures will have to undergo.

3. The subordinate tenures of the talookdars will derive no benefit from the registration.

He then proposes a plan that the registry may be by application, without any enquiry, except as to the title under which the tenure was created; and if the estate, when put up for sale, do not realise the arrears of revenue, the sale may be adjourned to a future day.

If payment of the full amount of arrear be not made by any under-tenant, the estate may be sold free from all encumbrances, the surplus sale proceeds being detained by the collector for the satisfaction of the damages and compensation, if any, payable to the under-tenant.

The plan of the Bill can be extensively applied to some parts of the country; and in this view, that plan, with a few alterations, might be retained, and some such plan as above suggested be superadded to it.

These being the suggestions of Mr. Theobald, it is necessary to remark that his first objection is obviated by observing that mere denial by the zemindar of payment is not to be deemed sufficient. Unless the purchaser obtain a judicial decree establishing the fact of default, the penal provision of the Section will not help him to oust the duly registered under-tenant.

The difficulty of the necessary enquiry must be overcome by proper resolution; annoyance and trouble are incident to every enquiry, and cannot be entirely got rid of without a radical reform of the civil and criminal institutions of the country.

The question of protection of the subordinate tenures on the sale of the under-tenure for arrears of rent, does not come within the scope of this Bill, as pointed out in a preceding part of this paper.

The plan proposed to be superadded to the one embodied in the Bill would make the scheme intolerable, and prevent all the advantages which are sought for from the original one. It would likewise open larger inlets to the commission of fraud than the author anticipates. The scheme proposed in the Bill provides not only for the security of the under-tenants, but for that of the mortgagees and leaseholders on the estate, as well as many other beneficial matters too numerous to be detailed in this place.

Captain Craufurd.

Captain Craufurd, whose petition praying for the protection of under-tenures of the second, third, and lower degrees in case of sale of the superior tenure for arrears of rent, has been referred to the select committee on this Bill, has addressed a further communication for the consideration of the committee in explanation of that petition, and in reply to some of the objections that were made to the Bengal Government's scheme for the same purpose, as well as to the objections that were made to extending protection to cases of sales of under-tenures for arrears; and he has submitted a scheme for the protection of honest and non-defaulting under-tenants of all degrees, and other encumbrances, from the consequences of a sale of landed property for arrears either of revenue or of rent.

Remarks.

Captain Craufurd presented two petitions—the second one is a supplement to the first.

It appears that it is one of his principal objects to protect the subordinate tenures on sale of the talook for arrears of rent. As this is a matter unconnected with the intent of the present Bill, it may be sufficient to refer to the preceding remarks on the subject.

The rest of his suggestions are about details and procedure which do not require notice in this paper, as all these matters can be better arranged by the local Government than the Legislature.

Mr. G. U. Yule, *Commissioner of Bhaugulpore.*

Mr. Yule considers Clauses 1 and 2, Section XXXV, calculated to do great injustice and injury to the holders of tenures guaranteed against increase of rent at the time of the decennial settlement; and as to post-settlement tenures, unless Government are prepared to incur the expense of a new revenue survey for the purpose of settling disputes, calculating the assessments, &c, Mr. Halliday's plan (though very good as far as it goes) does not, in Mr. Yule's opinion, go far enough. He would wish to see some provision restricting the rights of present proprietors to increase at will, or by a suit in the civil courts, the rent of tenures held for a certain number of years (say twelve) before the attempt to increase. This would be going very little farther than is proposed by the registry provisions of the proposed Bill, and would be unattended with the evils which registry and proportionate assessment, as proposed, must entail on a very great number of under-holders and zemindars and on Government itself, while the Government revenue, on Mr. Halliday's plan, would always be secured.

REMARKS.

Mr. Yule considers that it will entail great injustice on the holders of ante-settlement tenures if they be required to register them; but his objection mainly rests on the scofe of expense and trouble. It does not require any special notice, as it comes generally within the scope of the previous remarks on the subject.

ANTE-SETTLEMENT TENURES.

MR. F. GOULDSBURY, *Commissioner of Rajshahye.*

With regard to ante-settlement tenures, Mr. Gouldsbury cannot perceive that any injustice would be done by requiring holders to register, so as to give them "absolute security" against all future auction purchasers of the entire estates. The process prescribed for registration (he observes) is neither difficult nor costly, and the advantages to be gained by it would more than compensate the holders for any trouble and expense to which they might be put in placing their title upon a permanent and secure basis, while the just rights of the purchasers of the estates would be maintained. Mr. Gouldsbury, therefore, cannot think that any *boná fide* holder would consider it a hardship to be compelled to register. Nor does he see how the rights of these under-tenants can be affected by such process; for, although it exposes them to litigation, it does so only once for all, whereas at present their title is liable to be disputed by every successive auction purchaser. Mr. Gouldsbury agrees with the Lieutenant Governor of Bengal that it looks very like imposing a new and severe penalty for arrears of rent, to declare these tenures to be absolutely voidable by the auction purchasers, if any arrear (however small) should happen to be due on the latest date fixed for the zemindar's payment to Government. Such a state of things, he observes, might happen without any fault on the part of the tenant, for the time for realising the rents due to the zemindar from his under-tenants does not always correspond with that fixed by Government for the recovery of revenue; and, under the existing law, the zemindar has the power of bringing certain descriptions of under-tenures to sale with their privileges intact, and of annulling others after obtaining a decree for arrears. He therefore suggests the omission of the words "and whereon no arrear of rent was due on the latest day of payment of revenue as fixed under Sections III and IV of this Act," from Clauses 1, 2, and 3 of Section XXXV.

REMARKS.

Mr. Gouldsbury sees no objection to requiring ante-settlement tenures to be registered, as it will give them "absolute security" against all future auction purchasers. He gives his reasons in support of this opinion, which appear very cogent. He further remarks on the hardship of the condition, that no rent should be due on the latest day of payment from any registered under-tenure, as necessary to entitle such tenure to protection against the revenue sale. But it is to be borne in mind that these tenures bear instalments of rent by the Bengal or current months, which are generally two weeks before the latest day of payment of revenue. Since the provision of the law only requires the holders of the tenures to pay their respective instalments on due date, this cannot be a ground of complaint. Moreover, these ante-settlement tenures being the most profitable, in consequence of the greater prosperity of the country from the time of the settlement, it is very hard that the holders of them should be permitted to withhold their rents with impunity, and so jeopardise the estates of their superior landholders.

SECTIONS XXXV to XLII.—*(continued.)*

Mr. W. Tayler, *Commissioner of Patna.*

Mr. Tayler does not see the injustice of requiring ante-settlement tenures to be registered, or how the proposed condition and penalty in regard to arrears can be viewed as a violation of the privilege formerly conferred. He cannot believe that, because the legislature of 1793 conferred permanent privileges on the holders of certain tenures, the legislature of 1856 may not reasonably and justly, in pursuance of a great public measure, (beneficial to these persons as well as to others), call upon them to establish by registration the rights then conceded; and as no legislation can be efficient unless penalties are attached to a neglect or disregard of its provisions, he considers these penalties as a necessary and indispensable part of the enactment. That the fulfilment of this demand may entail counter-claims and consequent litigation, does not appear to Mr. Tayler to affect the question. The demand itself is reasonable; and if it be indispensable to the attainment of the important end proposed, the mere fact that a *refusal* to comply therewith will entail a forfeiture of privilege formerly granted, is not, he conceives, a sound or logical argument against it. Fully admitting that the holders of these tenures are entitled to the same exemption from violation of their recorded rights as are the proprietors of estates under the permanent settlement, he is of opinion that the legislature is entitled, in the case of both, to demand the discharge of a reasonable duty, like that of registration, in the furtherance of a great national good.

Remark.

Mr. Tayler fully and in an unqualified manner supports the requisition of the proposed law for registry on the part of the holders of the ante-settlement tenures, and refutes the arguments of the Lieutenant Governor and other officers.

Mr. C. Steer, *Commissioner of Chittagong.*

Mr. Steer observes that there will be no security for the purchaser of a zemindaree knowing what he purchases, if ante-settlement talookdars are to be exempted from showing their title-deeds, an obligation which is to be imperative on all other classes of talookdars. Nor does he consider the case of zemindars and talookdars to be analogous. A talookdar is liable, upon the suit of the zemindar, to be called upon to prove his right to hold his talook on such and such conditions; while the zemindar cannot be called upon to do any thing of the kind. To make the zemindar subject to certain new conditions provocative of litigation, would be to infringe upon his rights, and it could not be done with any show of reason or justice. But in the case of the ante-settlement talookdars, the only hardship they would suffer will be in being made to do *at once* what they are ever liable to be called upon to do; and this small wrong (Mr. Steer thinks) may surely be inflicted for the advantages it will produce.

Remark.

Mr. Steer's view is in accordance with the opinion noted above, and he has set forth his reasons in strong terms.

Post-Settlement Tenures.

As to post-settlement tenures, Mr. Gouldsbury, Mr. Tayler, and Mr. Steer concur with the Lieutenant Governor of Bengal as to the inexpediency of this portion of the proposed Bill on account of the practical difficulties which, it has been pointed out, will attend the execution of the law. Mr. Tayler thinks that the

provisions suggested by the Lieutenant Governor will be better calculated to secure the end in view. Mr. Gouldsbury, however, thinks it might be sufficient to enact that all tenures created since the settlement of the estate, shall hold as good against an auction purchaser as against the former proprietor, provided they were created in good faith and the rent is sufficient to afford a fair proportion of the revenue assessed upon the parent estate; and to leave it to the civil court to decide any questions that might arise regarding the auction purchaser's right to set them aside. In such cases a report might be required from the collector, as is done with regard to suits instituted in the civil courts under Regulation II. of 1819.

Referring to the Lieutenant Governor's recommendation that tenures which authorize the holders to collect portions of the rent of each ryot, shall not be considered entitled to registration as protected tenures under the Act, Mr. Steer is of opinion that such an exclusion would be an interference with the private rights of parties without any very good cause. He does not see what objection there can be to allowing a man living in a village and unable to rent the whole, to rent a quarter of it as a talook. It may doubtless be more troublesome to the ryot to pay his rent in portions to two or three persons, than to one; but his position renders him liable to this.

With the exception of the above and the other points noticed by himself, Mr. Steer considers that the Lieutenant Governor's draft on the subject of under-tenures is a decided improvement upon the original draft Act, and that it will subserve all the essential purposes of the proposed Bill, without incurring any of its most serious difficulties.

REMARKS.

In respect to post-settlement tenures, Messrs. Gouldsbury, Tayler, and Steer concur with the Lieutenant Governor and object to the introduction of the registry system, chiefly on the ground of the difficulty that will be experienced in carrying the measure into effect; but as this subject has been fully gone over elsewhere, it requires no further notice in this place. In fact the "practical difficulty" anticipated, is not really formidable to one who is practically acquainted with the details of the management of estates in Bengal.

The remaining portion of the remarks requires no further comment. The portions of the Bill which bear on the question of appeal to the revenue authorities, and the institution of civil suits for the reversal of the orders of those authorities, may be modified with advantage.

MR. B. J. COLVIN, *Judge of the Sudder Court, Lower Provinces.*

With reference to Sections XXXV to XXXVIII, Mr. Colvin is of opinion that much practical evil will follow the registry and mofussil investigations as proposed by the Bill, and prefers the plan proposed by the Lieutenant Governor of Bengal.

REMARK.

Mr. Colvin approves of all the objections and remarks made by the Lieutenant Governor of Bengal to the several important schemes proposed in the Bill. It is not necessary to repeat those objections and the explanations which were offered in regard to His Honor's Minute.

MR. A. SCONCE, *Judge of the Sudder Court, Lower Provinces.*

Mr. Sconce concurs in the objections of the Lieutenant Governor of Bengal to Section XXXV, and observes that the three concluding lines of the first, second, and third exceptions raise a question which is wholly foreign to the constituted rights accruing to purchasers.

SECTIONS XXXV to XLII.—*(continued.)*

He objects to the mode in which the validity of the tenures described in the first and second exceptions, is proposed to be affected or to be investigated by this Bill. At the same time he is not indifferent to the adoption of a proper scheme for accomplishing the registration of these ancient tenures. With respect to post-settlement tenures, he thinks the Lieutenant Governor's remarks merit the most earnest attention. In his opinion, instead of redeeming the pledge given by Regulation I. 1793, to enact laws for the protection and welfare of the ryots and other cultivators of the soil, the tendency of the present Bill will practically be to interpose a screen between us and them, by encouraging the creation of middle-tenures and perpetuating them against all contingencies. With reference to the concluding clause of the Section, he would enact that a sale-purchaser shall not be competent to enhance the rates of a *khoodkasht* ryot's rent, unless upon proof of fraud, or upon proof that within three years before the year of sale the rates had been lowered below the rates of the same village; and that he shall not be competent to re-assess the entire land possessed by the ryot, if it should be proved that the ryot held the land under definite engagements for twelve years, and that an abatement in the assessment had not been made within three years before the year of sale.

REMARKS.

The objection of the Lieutenant Governor of Bengal is adopted by Mr. Sconce. No further comment is therefore required, nor, for the same reason, do Mr. Sconce's remarks as to the effect of the existence of arrears from under-tenants, need any.

The objection taken to the mode in which the validity of under-tenures is to be affected or to be investigated, is mainly that, in a question of registration of a tenure, the right of holding the same should not be summarily investigated; but, considering the means the collector has in his records to assist him in such enquiry and the privilege accorded to the party to have recourse to the civil court for the reversal of the summary award of the collector, such objection cannot justly be maintained; besides, when Mr. Sconce himself is in favor of introducing the registry of these ancient tenures, but does not suggest any better scheme, the one contained in the Bill may be permitted to stand until a better one is proposed.

Mr. Sconce next moots a most important point connected with the subordinate land tenures. The Bill is condemned for affording protection to talookdars and other holders of intermediate tenures, to the entire exclusion of the really deserving class, the agriculturalists—the men who plough and sow; and he proposes to give all permanent resident cultivators a right of possession in the soil at a fixed rate of rent after an occupancy of twelve years. This amounts to something in the shape of *istemrary* by prescription.

The scheme of the Bill does not pretend to give any new rights or immunities to any class of ryots, but only a summary protection to the holders of ante and post-settlement tenures when the estate is sold for arrears, provided they pass the ordeal of a certain process. If the present laws are vague and obscure on the point, or any new constitution is intended to be created for the benefit of the agricultural class, it may be effected by a separate enactment, perhaps with better effect than by smuggling a clause into a Revenue Sale Law.

The question for consideration in a Sale Law, is, how far summary protection should be given to any class of the under-tenures affected by the existing law in consequence of a revenue sale; but it is not intended to define, whether there be a revenue sale or no sale, what should be the rights and privileges of any class of ryots. That subject, however important, does not legitimately belong to the present Bill; but if necessary, another Bill may be brought before the Legislative Council for the purpose, with more propriety and with a greater prospect of securing deliberate consideration on that important question.

OBSERVATIONS UPON SECTION. XLIII.

Rights of a purchaser being a sharer in any estate.

And of a purchaser of an estate not sold for its own arrears.

"XLIII. Excepting sharers in estates under butwarrah who may have saved their shares from sale under Sections XXXIII and XXXIV Regulation XIX. of 1814, and those who have done so under Section X or Section XI of this Act, any recorded proprietor or co-partner who may purchase in his own name or in the name of another the estate of which he is proprietor or co-partner; or who by re-purchase or otherwise may recover possession of the said estate after it has been sold for arrears under this Act; and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself, and due for the current or last preceding year, shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale, and shall not acquire any rights in respect to under-tenants or ryots which were not possessed by the previous proprietor at the time of the sale of the said estate."

MESSRS. J. DUNBAR AND W. DAMPIER, *Members of the Board of Revenue, Lower Provinces.*

Mr. Dunbar thinks it hard that a proprietor should not come in on precisely the same terms as any one else, if he is *boná fide* sold out, and subsequently acquires the means of buying the estate, as in the case of patrimonial property he may naturally wish to do. If the person from whom he purchases has acquired the estate without encumbrances, Mr. Dunbar does not see how it could again be made subject to them. Mr. Dampier, however, considers the provisions of this Section to be necessary to prevent collusion and fraud.

REMARK.

The objection of Mr. Dunbar is met by the explanation given by Mr. Dampier, and in fact the provision objected to is a re-enactment of an old law.

MR. H. STAINFORTH, *Member of the Board of Revenue, Lower Provinces.*

Mr. Stainforth remarks, with reference to this Section, that Section XXXIV, Regulation XIX. 1814 urgently requires amendment. The leading principle of the present Sale Law and Bill (he adds) is that the revenue shall be paid by a fixed date, but any owner of a specific mehal under butwarrah is at liberty to pay after this date, as, until it expires, it is impossible to ascertain the share of balance which he ought to tender, and because in practice it is impossible to carry out the provision of the Section.

REMARKS.

Mr. Stainforth's suggestion to modify Section XXXIV, Regulation XIX. of 1814, may be adopted, as the Butwarrah law is under consideration. But from the nature and the difficulty of the subject, no hope of its immediate modification can be held out.

MR. H. V. SCHALCH, *Officiating Collector of Balasore.*

Mr. Schalch observes that this Section of the Bill differs from the Act in force in the important omission of the word "unrecorded," and that hence any unrecorded proprietor, even if the heir of a deceased recorded proprietor, repurchasing his own share or the whole estate, might acquire the estate free from all encumbrances except those specified in Section XXXV. This, Mr. Schalch imagines, must be an oversight.

SECTION XLIII.—*(continued.)*

REMARKS.

Mr. Schalch's suggestion is a proper one. The addition of the words "or his heir or representative" will supply the defect. The latter term will include the executor, trustee, &c., who derives his title from the deceased, but it would be proper to limit such privilege to twelve months from the date of the demise of such recorded proprietor or co-partner.

MR. F. A. LUSHINGTON, *Officiating Collector of the 24-Pergunnahs.*

Mr. Lushington is of opinion that the provisions of this Section (if he has not misconceived its terms, which appear to him somewhat obscure) neutralize those of Section XIV, inasmuch as the former Section specifies that the purchaser of an estate under its provisions will acquire it subject to all its encumbrances, whereas the latter declares such a purchaser will obtain the estate free from them.

REMARKS.

Mr. Lushington has evidently misunderstood the purport of Section XLIII. The sale under Section XIV is for arrears of revenue *due from the estate,* while the sale under Section XLIII is for arrears or demands *other* than those accruing upon the estate itself. The circumstances and nature of the arrear or demand being different, the result must necessarily be different.

OBSERVATIONS UPON SECTION XLVII.

"XLVII. When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector may purchase the estate on account of the Government, in which case the Government shall acquire the property subject to the provisions of this Act.

Government may purchase at a sale.

Mr. E. A. READE, *Senior Member of the Board of Revenue, North-Western Provinces.*

Mr. Reade, of the Sudder Board at Agra, considers it necessary, in order to remove doubts and to guard against fraud, that there should be a provision in this Section empowering the Government, if necessitated to purchase property at a bid below the arrears incurred on the estate, to proceed against other property of the defaulter, if any, and to have recourse to the same measure if the amount bid in any case cannot wholly be recovered from defaulting bidders. Bids (he says) have been made and deposits lodged on the day of sale by friends and agents of the defaulters, leaving, after all exertions, a deficiency of the general amount for which the sale process was resorted to, and it is necessary to remove the doubts which have been entertained whether Government, when it becomes the purchaser at the re-sale, has a right to proceed against other property.

REMARKS.

Mr. Reade's suggestion, if adopted, will only entail additional hardship on the ex-proprietor. Let the amount of arrear be the upset price at which the estate should be put up for sale.

CONCLUDING REMARKS.

Having thus noticed the observations which bear on particular Sections of the Bill, it remains to advert to suggestions of a general nature. These suggestions require no particular comment, as in none of them is involved the principle of the Bill; they either refer to details or points irrelevant to the question under consideration.

MR. H. V. SCHALCH, *Officiating Collector of Balasore.*

Mr. Schalch thinks that the Act should distinctly state from what party the expense of issuing the sale and other notices specified in Sections IV, V, VI, VII, XXIII, XXVII, and XXXI are recoverable: for, although Circular Order, Sudder Board of Revenue (sale series), paragraph 25, directs the defaulter and the parties interested to be charged with the expense of serving certain of these notices, it may be doubted whether this order is legal, and it would be better that this point should be clearly settled by the law itself.

REMARKS.

Mr. Schalch's enquiry as to the party that shall be held liable for the expense of issuing notices requires not much consideration; the party interested, or the defaulter, as the case may be, should be charged with it. If the wording on the point be not clear, it can be made so.

MR. F. A. LUSHINGTON, *Officiating Collector of the 24-Pergunnahs.*

It appears to Mr. Lushington that the fees prescribed to be levied are excessive, and will prevent holders of under-tenures at rents under five hundred Rupees per annum from profiting by the security held out to them by registry; and he recommends a scale of fees for tenures paying under five hundred Rupees per annum. In the event, also, of an individual petitioning for registry on acquiring land by purchase, gift, inheritance, or otherwise, Mr. Lushington asks whether the fees are to be levied according to the new law or Regulation XV. 1797; and he likewise asks whether mutations are to be continued under Section XXI, Regulation VIII. 1800, or under the new law. Lastly, Mr. Lushington notices that the proposed Act contains no specification for the sale of land, save of estates paying revenue to Government; no where provides for the sale of any khiraj or lakhiraj tenure that may have been pledged as security for good conduct by those who may have subsequently forfeited the same; and omits all mention of the words "right and interest," hitherto intended to specify the amount of proprietorship to be disposed of, and all mention of the validity or otherwise of a sale of an estate, if subsequently discovered to have been purchased by an amlah of the collector's office or one of his deputy collectors.

REMARK.

Mr. Lushington remarks that the fees prescribed are excessive. If they be really so, they can be reduced at any time, after sufficient experience has been obtained.

MR. D. ANDREW, *(of the Indigo Planters' Association)*

Mr. Andrew, a member of the Indigo Planters' Association, suggests, in order not only to ensure the Government due, but also to preclude the possibility of any fraud of the zemindar in withholding the revenue paid to him by his putneedar and afterwards bringing the talook to sale for arrears and purchasing it *benamee,* that a clause be inserted in the Bill giving a putneedar the option of paying directly into the collector's treasury

his monthly instalments of rents on his zemindar's account; a receipt for the same being granted to him by the collector, who should carry the amount due for Government revenue to credit, and hand the balance over to the zemindar. Mr. Andrew also suggests, as putnee talooks made in good faith have been already registered as directed by law, that a clause be inserted in the Bill upholding those registered putnees.

REMARKS.

Mr. Andrew, of the Indigo Planters' Association, suggests that the putneedar be allowed to pay his rent directly to the collector on account of his landlord. This is liable to objection; it will be making the collector a regular banker between landlord and tenant. The collector will have to recover money from the under-tenant, and carry it to the credit of the zemindar through *Marfutwary* of the under-tenant with specification of his name and date, and grant him a receipt for the same. The amount is then to be credited on account of the arrears of revenue when due, by transferring it from the *Amanut* account, to the credit of the land revenue. If there be any surplus after payment of revenue due from the estate, it must be paid over to the zemindar after the last day of payment, and that of course on his receipt. These processes rather belong to a banker or land agent than a revenue officer.

RAJAH SUTT SHURN GHOSAL.

Rajah Sutt Shurn Ghosal suggests the insertion of a Section to the effect that holders of under-tenures created since the settlement, from whom no balance was due on the latest day of payment, should be entitled to damages from the defaulting proprietor, his successors, &c., in proportion to the loss sustained by them, by the avoidance of their tenures on the occasion of a sale of the zemindaree on arrear within a certain period. He also remarks that the Bill makes no provision enabling purchasers to take peaceful possession of estates sold at revenue sales. A notification and a certificate under Section XXVII are not sufficient when a purchaser meets with opposition either from the defaulters or the talookdars whose talooks are not affected by the sale. If Section XXVIII of the old sale law (Regulation XI. 1822), which enjoins the appointment of a commissioner to give possession, be restored with some alterations suited to the times, litigation under Act IV. of 1840, and breaches of the peace, will be greatly diminished.

REMARKS.

Rajah Sutt Shurn Ghosal suggests that there should be a provision in the Bill for the recovery by under-tenants of damages by summary process on account of losses sustained by the party in consequence of the sale of the parent estate for arrears of revenue. However desirable it may be to make such a provision, yet the question of consequential damages, and the amount thereof, will sometimes be so intricate that no benefit can be hoped for, except from a regular suit before a competent civil court, and that court has inherent jurisdiction on such points.

The subject of putting the auction purchaser in possession of his purchase, has already been discussed with reference to the question mooted by Mr. Samuells; it is not necessary to re-argue the point in this place.

CONCLUDING REMARKS.

Petition of the Protestant Missionaries in or near Calcutta.

The petitioners express in general terms their approval of the proposed Bill, criticise the objections made to some of its provisions, and advocate the passing of additional measures for the emancipation and protection of the ryots.

They approve particularly of Section XV, from the adoption of the principle involved in which they anticipate a powerful stimulus to exertion for the purpose of securing freehold rights. But they suggest that the terms of that Section be extended by a provision for the payment of a definite rate of purchase-money (say twenty years' purchase of the recorded land-tax) in consideration of the absolute redemption of that tax; and further, that certain encouragements to such redemptions be granted in the form of partial remissions of arrears —an official survey of every estate redeemed, with an official certificate and record of boundaries—and a public notification in the Government Gazette of the names of all who avail themselves of this law.

Remarks.

The Missionaries' petition contains no special argument requiring notice. It is clear that they are not fully acquainted with the merits or demerits of the point at issue, nor could it be expected that they would be masters of an intricate revenue question which has perplexed the ablest financial officers. Even Holt Mackenzie, after twenty years' service in the revenue line, confessed, in answer to queries, that he was then no better acquainted with the intricate revenue system of India than the day he first entered on the revenue service of Government. It would, perhaps, have been more in accordance with their vocation had these reverend gentlemen not interfered with these secular questions. It is, however, creditable to their feelings that they are prompt to extend their helping hands to the poor and weak.

Remarks upon Mr. H. T. Raikes's Observations upon Sections XXIX and XXXV.

Mr. Raikes, judge of the sudder court, has sent a further paper, limiting his observations to Sections XXIX and XXXV of the Bill, the former referring to the annulment by decree of civil court of sales under the proposed Act, and the latter to the sweeping away of all incumbrances created between the settlement and the sale.

The objection is to the effect that, on the annulment of a sale, "a new sale *may* be made," which would render it unnecessary for the defaulter to "*obtain* execution" of his decree. Hence Mr. Raikes considers the phrase used in the Bill to be unmeaning. But he forgets that the sale may *not* be made; and it will in that case be necessary for the proprietor to "*obtain* execution." The Bill fixes the period within which "execution of such decree *must* be obtained," because, for want of such provision, there have been cases in which mesne profits for a number of years have been claimed.

In respect to his objection about the purchase by a sharer, if Sections XI, XIV, and XLIII (which latter Section Mr. Sconce has strangely overlooked) be read together, the difficulty he apprehends will vanish. The recorded co-partner's becoming the purchaser of the other shares, will not improve his position in respect to avoidance of tenures, the rights of the under-tenants will be safe, and there will be no anomalies to guard against.

CONCLUDING REMARKS.

The British Indian Association.

The petitioners urge that the existing law defines the landholder's power to create under-tenures subject to the risk of annulment on the sale of the zemindary, which risk the Bill entirely removes where the under-tenant registers his holding and title. The petitioners observe that the Lieutenant Governor of Bengal admits indeed the positive loss to the zemindars which the proposed change in the law will involve, but brings to his aid the popular and specious doctrine that the interests of the few are to be sacrificed to the welfare of the many, the applicability of which true and politic maxim to the case in point the petitioners deny. They urge that the State, by imposing certain harsh and depreciatory conditions upon the zemindar's power to create talookdary rights in order to secure the integrity of the land revenue, imposed a hardship on the zemindar and a check and an arbitrary limit to the enjoyment of his estate; and that past zemindars have suffered in pocket from that condition by reason of their inability to offer any other than an inferior character of tenure, that is, one subject to a mysterious and undefined contingency. To apply a remedy to this evil of past legislation, the Bill now proposes to enable zemindars to confer a complete and indefeasible (instead of a precarious) right to a subordinate landholder; but the form in which the remedy is to be applied appears to the petitioners to be not only singular but an illogical deduction from the premises, when it declares that the zemindar has in past years conferred indefeasible interests, or that the contingent and limited interest, which alone he could and did sell, shall henceforth be and bear the value of a complete indefeasible estate. This dilemma, the petitioners observe, is one created by, not one which presents itself to, the framer of this Bill, who, in his eagerness to grant a boon to one of the contracting parties, (the buyer of the precarious contingent interest or the subordinate landholder,) entirely overlooks the reciprocal rights of the other contracting party (the seller or the zemindar). While, moreover, the zemindar alone has been the sufferer and has enjoyed no benefit in consideration of the contracted value of his under-tenure, the under-tenant has all along enjoyed the substantial benefit of reduced price and reduced rent, and has ensured himself by withholding the price of his risk from the zemindar; and the legislature now proposes to indemnify him from the risk, but permits him to retain the price. Lastly, the petitioners consider that the effect of the proposed law must be to depreciate the salable value of zemindary estates greatly, inasmuch as the difficulty of ascertaining precisely what under-tenures are and what are not reserved, and what may be their value, will be an almost impossible task for a purchaser, and no definable system of registration can reduce this to a certainty. Instead, therefore, of this doing a universal or great good by inflicting a partial grievance, or rather of gratuitously adding to a grievous injury already inflicted, by conferring a boon and an indulgence at the expense of the injured party, the petitioners are of opinion that the natural and consistently deducible remedy would be to declare the power of the zemindar to create, in future, indefeasible interests, and to give the existing talookdars the option to purchase what they have neither got nor paid for, namely, an indefeasible interest, instead of the precarious tenure they now hold; and this plan might readily and consistently be carried out by making the assent of the zemindar a condition precedent to registry of an under-tenure. The petitioners further suggest for consideration whether, if the forfeiture of the tenure is to be or can be legitimately regarded as a breach of implied engagement by the zemindar, the injured party should not be declared entitled to compensation for that breach, and a tribunal created for the equitable determination of such questions.

The petitioners next proceed to point out the very partial and incomplete manner in which the proposed change in existing putnee and talookdary interests is to be effected, as respects even the subordinate owners. The Bill, they observe, assumes to protect or enlarge only those interests or estates which are immediately subordinate to the sudder-tenure, but leaves intact all below that grade, so that a sub-talook will still be forfeited, under

Section XI, Regulation VIII. 1819, without any default of the sub-talookdar. Again, no criterion is given or limit imposed on the collector for determining whether or not the tenure "was created in good faith so far as the interests of the Government revenue are concerned, and that the rent payable by the holder is not less than is fully sufficient to afford a fair proportion of the revenue assessed upon the parent estate." As a more just and consistent mode of effecting the declared purpose of the Bill, the petitioners suggest that the collector, or Government representative, should be the objector rather than the judge, and the tenure should be registered so as not to create a title, but to relieve from forfeiture where a title exists, subject to veto or caveat on behalf of Government whenever danger to the revenue can be made to appear; and that some affirmative rules should be enacted for defining that danger and the mode of proving it.

The petitioners question the policy of increasing middle-tenures, which have already largely increased both in number and value since the date of the settlement; as enquiry will prove that rent is highest and the interests of the cultivator have been most neglected or borne down wherever these tenures abound, and that the worst of landlords are the middlemen whom it is the object and necessary consequence of the proposed Bill to encourage and multiply.

The petitioners further notice that the framer of the Bill has altogether ignored the provision contained in Section XXVIII, Act I. of 1845, and Section XXIX, Act XII. of 1841, which (though it has certainly been a dead letter) invests the Government with a discretion to which much the same objections are applicable as to the substituted provisions in the Bill.

Finally, it is strongly urged that the proposed change in under-tenures will be felt as an attack upon the zemindary settlement and the continuance of the system which that measure introduced; and that this interference, as well as the wide administrative power of interference conferred by the Bill, are proposed at a time when the immediate ruler of Bengal holds the strongest views as an objector and an avowed uprooter and destroyer of the zemindary settlement. Hence, no wonder that not merely zemindars, but all practical and thinking natives, regard the Bill with apprehension and distrust. The petitioners therefore pray that the principle of meddling with the existing order of things by legislative experiment, be not needlessly or rashly introduced; and that the Council will not give the native community any ground or apology for surmising that there is a deliberate intention in the minds of their rulers either to destroy or to lower the status of the Bengal zemindar, by encouraging and giving life to the views and policy of those who are laboring to revolutionise and to abolish the zemindary settlement.

The petitioners cordially concur in the protection proposed to be given by the Bill to sharers in joint estates against forfeiture without personal default.

They propose that the publication of latest dates of payment, referred to in Sections III and VI, be made in the vernacular as well as the *English Gazette*, as an instance has been known of an estate being advertised for sale in the Serampore *Bengalee Gazette* after the sale had actually occurred.

They suggest that the terms of Section IX be made more comprehensive, as they are aware of no objection in principle to conferring a right of recovery of money paid in discharge of the revenue due from an estate, upon any party whether interested or not, the civil courts having power to award or withhold interest as the circumstances may warrant. Such a provision, it is observed, would save embarrassing questions of the right to make a deposit, while it would also scarcely offer any field for abuse or chance of any injury to any party concerned.

The petitioners further suggest that a putneedar paying in default of his zemindar, be permitted a summary remedy to recover the money distrained with interest, or, if he so prefer, to treat the payment as an advance of

his putnee rent; and that an additional clause be added to Section XV requiring the collector, where the jumma of a depositor is paid without resort to his deposit, to draw the interest and to pay the same to the depositor.

The petitioners point out a defect in the existing law not adverted to in the Bill, namely, the provision in Section X, Regulation I. 1801, and Section LI, Regulation XXVII. 1803, by which collectors of revenue are still authorised to imprison landholders for arrears and to enforce their personal attendance upon suspicion of *benamee* purchase, and which should be repealed.

Lastly, the petitioners recommend the introduction, into this or any law that may be passed in amendment of the law for sale of lands to realise the public revenue, of a provision enabling the collector, with the sanction of superior authority, wherever extensive interests would be endangered or prejudiced by forcing a sale, to attach that estate as an alternative.

Remarks.

The petition of the British Indian Association contains much that is quite irrelevant to the subject of the Bill. The objections of the Association on the main point, namely, that of giving security to under-tenures, may be reduced to two.

1st. It will transfer the value of certain zemindary interests to under-tenures, without any compensation to the possessors of the former.

Under the existing law, zemindars are unable to create under-tenures with absolute security. Nevertheless, an immense number of such tenures has been created, on the receipt of consideration far inferior in amount to what would have been received had zemindars the power to give absolute security to their under-tenants. Now this difference in price is clearly due to the zemindars in every scheme that may be set on foot to give absolute security to under-tenures.

The Association, therefore, suggest that no under-tenure be registered without the consent of the zemindar, who will thus have an opportunity of indemnifying himself for the loss to be sustained by him in the depreciation of the sale-value of his zemindary.

2nd. The Bill is impolitic; because it is not much required, because it may affect the permanent settlement, and because the multiplication of middlemen is not conducive to the welfare of the community.

For the elucidation of the objections and propositions of the Association, it is necessary to propose the following questions:

1st. Whether the scheme of protection at a revenue sale to registered tenures will in any way be unjust to the superior landholders to whose estates they are attached, or interfere with the terms of the contract between landholders and their tenants?

2nd. Whether the Government, in assenting to the adoption of the scheme, do not abandon a certain lien over the estates, forming one of the conditions of the permanent settlement?

3rd. Whether the scheme is based upon the provisions of the existing law, or entirely an encroachment on the supposed rights of the landholders?

4th. Whether the scheme of the Bill in any way interferes with the terms of the permanent settlement?

CONCLUDING REMARKS.

1st Question. Whether the scheme of protection at a revenue sale to registered tenures will in any way be unjust to the superior landholders to whose estates they are attached, or interfere with the terms of the contract between landholders and their tenants?

It will be admitted that the subversion or the enhancement of rent of an under-tenure, created, perhaps, forty or fifty years back and held for all that time in good faith, without fault or breach of contract on the part of the holder of the under-tenure and merely because of the default of his superior in the due performance of his contract with Government, which the holder of such tenure has no means either to prevent or remedy, is a severe hardship to one of the contracting parties—the tenant—that must operate injuriously on the interests of the community.

The zemindar sells or gives away to an under-tenant, on receiving a valuable consideration, a part of his profit from the land included in the tenure or his right to profit from its future improvement. The under-tenant, in good faith and the assurance of the permanency of his tenure, purchases the proprietary right of the said tenure, by payment of a certain consideration as agreed between the parties.

Such being the contract between the two parties, the principle adopted by the civil courts under the operation of the present law, is, that any loss or damages suffered by an under-tenant, who has given a valuable consideration for his permanent tenure, arising from the revenue sale of the estate owing to the default of the zemindar, is, under certain circumstances, recoverable by the under-tenant from the defaulting zemindar by a civil suit; for the zemindar has sold the same thing twice, once to the under-tenant and again to the auction purchaser. This duplicate sale of an interest should not be permitted in justice, equity, and good conscience.

The zemindar, instead of obtaining a price for the destruction of the tenure from the auction purchaser and refunding the same to the holder of the tenure under decree of the civil court, would, by this method, allow the tenure to be reserved and get the value of the estate subject to such reservation, that is, what it is really worth, and what really belongs to such zemindar.

Would the adoption of such direct course, for the protection of the interests of the under-tenant, entail any hardship on the zemindar? A zemindar in arrear has a right to claim that his estate be offered for sale in order that he may obtain that value which he is really entitled to, but not that he may obtain one that he has no right to by including the property of others created such by his assignment. That portion of the zemindary profit for the transfer of which he or his predecessor has received a value, should not be subjected to sale for his benefit, he having no beneficial interest in it.

It cannot be alleged on the part of the zemindar that, when the tenure was created, the holder did not pay the full value in consideration of the risk of the revenue sale, for the zemindar fully guaranteed the permanency of the tenure, every such tenure being expressly declared, in the deeds exchanged between him and the under-tenant, to be for ever heritable and transferable by gift or sale; and having received the consideration amount, he cannot now object to that permanency being effectually secured by legislative enactment.

The legislators of 1793 have been most zealous in enforcing the terms of the contract between landlord and tenant. Look at the wording of Section XLIX, Regulation VIII. of 1793, which prescribes that, "with regard to such *Istemrardars* also as have not held their lands at a fixed rent for so long a period, if the zemindar or other actual proprietor of land has bound himself by the *deed* which he may have executed not to lay any increase upon them, *he shall not be allowed to infringe the conditions of the deed for his own benefit.*" Now, in good faith, the under-tenure was created with the condition of permanency and an hereditary character on receiving a valuable consideration; and to object to any legislative enactment which proposes to confer upon such tenure

that permanency and hereditary charactor, is to ask the legislature to be allowed on a future occasion to infringe the conditions of the deed for one's own benefit, contrary to the express terms of the contract between the parties.

By the laws of 1793 no zemindar was allowed to grant leases for more than ten years, and yet between that year and 1812, when the restriction was rescinded, the grant of talooks and other leases at a rent fixed in perpetuity, had become common with the zemindars of Bengal; and the under-tenants, contrary to the provisions of the law of the time, used to accept such grants on the good faith of the zemindar, paying valuable consideration for such tenures. The legislators, finding that such contracts had been made in good faith, retrospectively legalised them by Section II, Regulation VIII. of 1819. Again, the last mentioned law likewise provided rules for the sale of putnee-tenures for arrears of rent in conformity with the terms of the putnee deeds, when the power of effecting such sale at the discretion of the zemindar under his own direction was held by the Sudder Court to be illegal and impolitic. The law of 1819 was hailed with gratitude by all classes of people; and there was not a word of objection or a murmur from any quarter. The vehement objections raised by the Association to the salutary provisions of the present Bill, are calculated to subject that respectable body to the imputation of desiring to furnish zemindars, who may have granted leases or other temporary or permanent assignments of their land for a money consideration, with a means of annihilating those under-tenures for their personal benefit.

From the foregoing observations, it is quite clear that the protection of under-tenures at a revenue sale is not in any way an injustice to the zemindar; it only deprives him of an illicit profit at the expense of the under-tenant; and, so far from interfering with the terms of the contract entered into between him and his tenant, it only enforces the provisions of that contract by legislative enactment.

It has been the policy, as it has been considered the duty, of every civilised Government both in its legislative and its executive capacity, to enforce the legal provisions of contracts between man and man; and where any law has been required for the purpose, the enactment of such law has followed for the good order of society. The parties now benefited, as noticed in the preceding paragraph, by the provisions of Regulation VIII. of 1819, surely cannot with any consistency object to the analogous object of the present Bill; nor can they argue against that object from the creation of numerous under-tenures under the existing risk, if they take into consideration the fact of the creation of numerous under-tenures between 1793 and 1812, as noted above, and the risk of illegality attached thereto.

Land, under a well regulated Government, it has been observed, is the most desirable of all property; and the industry and capital of the people are directed towards its improvement, which is as essential for their own welfare as for the prosperity of the State. Hence the holders of land, whether they be superior or under-tenants, all equally expect and are entitled to protection from the Government; and special and general laws are often found necessary, not only to afford them protection as against other classes, but also to regulate their dealings and contracts among themselves.

2nd Question. Whether the Government, in assenting to the adoption of the scheme, do not abandon a certain lien over the estates, forming one of the conditions of the permanent settlement?

By Section IV, Regulation V. of 1798, it is declared that "malguzarry lands (lands assessed with the public revenue) are, in all cases, by whomsoever possessed, held answerable for the public revenue assessed thereon;" and Section V, Regulation XLIV. of 1793 provides that, "when lands are sold to make good arrears of public revenue due from them, all engagements subsisting between the proprietors and their dependent talookdars, farmers, and ryots on account of such lands, are to be null and void."

CONCLUDING REMARKS.*

The principle on which these laws are based is clearly laid down in Section XXIX, Regulation XI. of 1822, which declares that "the property and privileges possessed and exercised *by the proprietor* being perpetually hypothecated to Government for the revenue assessed thereon, no claim of right founded on any act of the original engager or his representative, or on any plea impeaching the title by which the said engager may have held, shall be allowed to impugn the right of the revenue authorities to make the sale, or to bar or to affect the title and interest conveyed to the purchaser by the sale," that is, free from any accident or incumbrance that may, subsequent to the permanent settlement, have been imposed or have supervened thereupon.

Such are the conditions under which estates are held by the zemindars in virtue of the permanent settlement; and the zemindars again, in their turn, enjoy the privilege that any talook or other salable tenure created subsequent to the settlement and forming a dependent part of their estates, when disposed of under Regulation VIII. of 1819 at a public sale for arrears of rent due on account of it, is sold free of all encumbrances that may have accrued upon it by the act of the defaulter, his representatives, or assignees (Section XI, Regulation VIII. of 1819.)

Section XII of the said law states that "the rules of the preceding Section being *declaratory of the principle to be observed on all occasions* wherein salable tenures are made responsible for the zemindar's reserved rent, will equally apply to the case of talooks heretofore sold, as to those that may be sold henceforward."

It will be observed that, by Section IV, Regulation V. of 1798, Section V, Regulation XLIV. of 1793, and Section XXIX, Regulation XI. of 1822, the Government has as much prior lien on the estates of the zemindars, as the latter by Sections XI and XII of Regulation VIII. of 1819 have on the dependent salable tenures attached to their estates. The dependent tenures are equally liable to be cancelled either at sales held for arrears of revenue or rent due from the tenures.

Now if Government, from whatever consideration, desire to relinquish this prior lien on the estates of the zemindars as far as it affects the under-tenures, and thereby afford protection to all registered under-tenures under certain conditions from the effects of revenue sale, it may be asked, how in the name of common sense can the zemindar step in and question the propriety of such relinquishment of lien by Government? The zemindars have no concern with the right which the Government possess. The Government is the only party to consider the propriety of relinquishing the same. If a third party, from some motive best known to him, come forward to dictate the proceedings of others without having any legitimate and honest interest in the matter, he may be silenced without much discussion.

Suppose the Rajah of Burdwan, in whose estates these salable tenures after the date of the settlement have largely increased both in number and in value and continue to increase, voluntarily, from motives of justice or other cause, feels inclined to relinquish the privilege he as zemindar has under Sections XI and XII of Regulation VIII. of 1819, and thereby gives protection under certain conditions to the durputneedar from the effect of the sale of the putnee tenure for arrear of rent—Can any putneedar question the propriety of, or complain against the proceedings of the rajah? If any putneedar be blinded by self-interest and impugn the act of the rajah, he will have no hearing or sympathy from any quarter.

The case between Government and zemindar is so nearly analogous to that between zemindar and putneedar, that it requires no further observation or remark to expose the fallacy of the argument contained in the petition of the Association.

CONCLUDING REMARKS.

3rd Question. Whether the scheme is based upon the provisions of the existing law, or is entirely an encroachment on the supposed rights of the landholders?

It is only necessary to refer to Section XXXI, Regulation XI. of 1822, Section XXIX, Act XII. of 1841, and Section XXVIII, Act I. of 1845, to establish that the scheme of the Bill is an improvement on the existing law.

Section XXXI, Regulation XI. of 1822, states that the rules for cancelling under-tenures at a revenue sale are indispensable for the security of the public resources; but, as the application of the rules leaves an opening for abuse, by enabling a zemindar, who may have granted leases or other temporary or permanent assignments of his land for a present money consideration, to annihilate the under-tenures so created by him, *it enacts* that, before sale is made of an estate, the Government, when it shall see proper, may direct it to be made subject to leases, assignments, or other encumbrances, notice of such condition being given at the time of calling up the lot for sale; but in case such restricted sale shall not realise the amount of arrears due from the estate, or there shall appear ground to apprehend that, by reason of the restriction, the future realisation of the revenue will be endangered, such restricted sale prior to its being confirmed may be cancelled, and re-sale authorised without any restrictions; but if, at the unrestricted re-sale, the purchase-money realised exceed, in a large amount, the sum obtained at the restricted sale, it shall be competent to the Government to direct a portion or the whole of the excess to be paid to the persons whose interests, having been reserved at the first, shall become void at the second sale.

This Section was repealed by Act XII. of 1841, and, except the statement and reason, was re-enacted as Section XXIX of the latter; and when that Act was repealed by Act I. of 1845, the said provision was again re-enacted by Section XXVIII of the last mentioned Act, which is now in force.

By the provisions of the existing law, the Government may, at any time before the sale of an estate for arrears of revenue, direct such sale to be made subject to the restriction as hereinbefore mentioned, and when such sale is cancelled and a re-sale takes place, the Government may at its discretion distribute the surplus sale proceeds among the persons whose tenures become void at the second sale. The scheme of the Bill provides that, under certain conditions and restrictions, the tenures are to be registered for the purpose of protection against a revenue sale, and the summary order of the collector for rejection or admission as to registry is to be subject to reversal by a suit in the civil court.

The petitioners state that, "since the date of the settlement, it is notorious that these tenures have largely increased both in number and in value and do continue to increase." Hence it must be admitted that, if the reason which induced the Government in 1822 to reserve to itself a power to impose conditions on a revenue sale in favor of under-tenures, (so shortly after the promulgation of Regulation VIII. of 1819, by which they first recognised the validity of those tenures,) was then valid, the necessity for such protection, after thirty-five years, by the increase of those tenures in number and in value, must be ten-fold greater. To meet the exigency, and having no opportunity of knowing the individual hardships going on in the mofussil by the cancellation of under-tenures in consequence of revenue sales, and not desiring to exercise a special power on special occasions in favor of any special under-tenures of an estate, or to exercise any discretion on particular occasions in distributing the surplus sale proceeds as the law provides, the Government now propose to give protection to all classes of under-tenures under certain conditions and restrictions, and, divesting itself of all power of interference, to leave the collectors and the civil courts, in their respective judicial capacities, to carry the scheme of the Bill into effect. This is at once a great improvement on the old plan, consistent with the interests of all parties, and less liable to objection (if to any) in point of principle.

CONCLUDING REMARKS.

The zemindars, receiving the extensive powers and immunities accorded to them by Regulation VIII. of 1819, have during the last thirty-five years largely increased the permanent tenures in their estates; but in so doing they were not merely well acquainted with their powers under the law of 1819 over under-tenures, but likewise with the power of Government over their estates under Section XXXI, Regulation XI. of 1822, for preserving those tenures at revenue sales; to which discretionary power, the Association now say "much the same objections are applicable as to the substituted enactments in this Bill."

The zemindars having such knowledge, not only continued to increase the under-tenures, but through their representative, the Landholders' Society, took a large share in the discussion that took place when Act XII. of 1841 was passed; and ultimately Act I. of 1845 was promulgated in consequence of the suggestions contained in the petition of that society. No objection to Section XXXI of Regulation XI. of 1822, or the re-enactment of the said provision in the law of 1841 or that of 1845, was then made. Hence the re-enactment of the same on an improved plan cannot truly be described as taking them by surprise, or be made a ground of complaint!

4th Question. Whether the scheme of the Bill in any way interferes with the terms of the permanent settlement?

The Association on this point, state in general terms, "that there is a deliberate intention in the minds of their rulers either to destroy or to lower the *status* of the Bengal zemindar, by encouraging and giving life to the views and policy of those who are laboring to revolutionise and abolish the zemindary settlement." It is difficult to meet such general declamation. Had the Association pointed out the particular immunities granted by the permanent settlement to the zemindar that were about to be infringed by the scheme of the Bill, it would have been more to the purpose; as the matter now stands without any specification, it can only be met by a general denial of the charge being wholly unfounded.

The scheme recommended by the Association for adoption is that no under-tenure be registered without the consent of the zemindar, who will thus have an opportunity to indemnify himself for the loss to be sustained by him in the depreciation of the revenue sale value of his zemindary. The proposal is nothing less than to place in the hands of the zemindars a means to extort the greatest possible sum from their dependent talookdars;

It is well known to that body that property can be acquired only by the five following means :—

1st. Inheritance, gift, or bequest;

2nd. Partition or exchange;

3rd. Private purchase;

4th. Purchase at a sale under execution of decree or order of judicial authority;

5th. Purchase at a sale under revenue law.

The right acquired by the purchaser by the last mentioned means, a revenue sale, is peculiar, and that peculiarity is for the protection of the public revenue and not with a view to benefit either the purchaser or the ex-zemindar. The remaining four classes of acquirers of property obtain it subject to all encumbrances as they stood at the time of the acquisition—*vide* Clause 2, Section III, Regulation XVIII. of 1812, which enacts that "all leases made in conformity to Sections II and III, Regulation V. 1812, and Section II of this Regulation, shall remain in full force, notwithstanding the division of a joint estate among the sharers, or the sale of the whole or a portion of any estate in satisfaction of a decree of court, or devolving of the same by inheritance, or the private transfer thereof by sale, gift, or otherwise."

The majority of the alienations of property in the country is in one or other of the four modes of transfer noticed above. It is a few only who acquire estates at revenue sales. In fact, few revenue sales take place in

these days; hence the sale without incumbrance being so limited, there cannot be much ground of complaint. It has already been shown that ex-zemindars have no grounds of complaint. The expected purchaser of course has not the slightest reason to object, as he will only pay for an estate in proportion to its value; and the rule "caveat emptor" is strictly applicable to him, particularly when, after the adoption of the scheme of the Bill, he may at any time, by referring to the registry of the collectorate, have the means of knowledge of all registered encumbrances of an estate and their assets.

The persons who have acquired property by partition, private purchase, or sale under execution of decree, have paid the value of the estate after taking the several encumbrances thereon into account, and the ex-proprietors are not now and cannot be claimants for asserting or refusing the registry of these tenures. How, in justice, can such an acquirer or his representative or assignee be considered entitled to indemnify himself for the loss to be sustained by him in the depreciation of the revenue sale value of his estate, when he did not participate in the relinquishment of any portion of the value on the occasion of the creation of the tenures in consideration of the risk of the revenue sale? He acquired the property as it stood at the time of his acquisition and paid its value accordingly. Hence the proposal of the Association, to give opportunity to all classes of zemindars to indemnify themselves for the loss to be sustained by them in the depreciation of value of their estates at a revenue sale, cannot, at least in respect to the foregoing classes of the acquirers of estates, be supported.

It has often been urged by certain parties that putneedars, in consideration of the risk of the revenue sale, do not pay the full value of their leases; but such remarks are quite unfounded, and undeserving the attention of any one who has a practical knowledge of Bengal land tenures.

The putneedars acquire their tenures on the following guarantees, namely:—

1st. The assurance of the zemindars, for themselves and their heirs and representatives, of the permanency of the tenures;

2nd. The putneedar's power to liquidate the arrear of revenue on the last day of payment, and thereby prevent the sale of the estate and consequent injury to his property;

3rd. The right of Government, established by the law of 1822 and continued by that of 1845, to interfere, with a view to preserve the under-tenures at a revenue sale, or indemnify the holders for their losses, when the injury to be sustained by the latter is properly and in due time represented to Government;

4th. The putneedar's right, under certain circumstances, to sue the zemindar for injury occasioned by the default of the latter.

With all these securities in favor of the putneedar, he from honest ambition and natural pride of acquiring real property, is not only inclined to pay the full value of his tenures, but even more when there is competition in the case and the wants of the buyer urge him to it. The zemindar likewise, under those circumstances, does not grant the lease as a permanent heritable tenure, without receiving the highest value for his land. To say that the zemindar has granted the lease without receiving the full value for his land, or that the putneedar has not paid the full value for the land, is a fallacy that requires no further exposure.

The Association, in the concluding part of their petition, submit certain suggestions on some of the earlier Sections of the Bill, which shall be noticed below.

The suggestion that the publication referred to in Sections III and VI of the Bill, be also inserted in the *English Gazette*, seems to be uncalled for, as the term "*Official Gazette*" in the said Sections will of course

include the vernacular as well as the *English Gazette*; hence any alteration in the wording of the Section is unnecessary.

The Association recommend that Section IX be made more comprehensive, and that, when an under-tenant deposits the arrear of revenue due from the zemindar, he be permitted to have a summary remedy to recover the same: as they do not say in what respect it is deficient, or what should be supplied to make it comprehensive, it may be left unaltered. The proposed summary remedy to recover the amount deposited seems objectionable in principle, as, if such summary remedy be permitted to the putneedar, it is due to every other class of depositors to have the like benefit: besides, a regular suit in the civil court, for the recovery of the amount of the deposit, will be so simple, and the evidence of payment so positive, that it will hardly justify interference with the jurisdiction of the ordinary courts.

It is hardly necessary to add a clause to Section XV, as suggested by the Association, requiring the collector, where the usual instalment of the Government revenue is paid without resort to the deposit or its interest, to draw the interest and pay it to the depositor, as such condition will form the subject of the agreement therein referred to, though there appears to be no objection to add such a Section, or rather such a proviso to Section XV of the Bill.

The Association observe that "the collectors of revenue are still authorised (Regulation I. of 1801, Section X, and Regulation XXVII. of 1803, Section LI) to imprison landholders for arrears, and to enforce their personal attendance upon suspicion of *benamee* purchase. These enactments should be repealed." But these remarks and suggestions have originated from error. As Regulation XXVII. of 1803 is exclusively applicable to the Ceded Provinces, which are intended to be exempted from the operation of the Bill, no reference to it was necessary; besides, Section LI of the said Regulation, and the concluding part of Section X, Regulation I. of 1801, are to the same effect, and have no reference either to imprisonment of landholders for arrears, or to the enforcement of their personal attendance upon suspicion of *benamee* purchase.

A part of Section X, Regulation I. of 1801 empowers the collectors to cause the attendance of any landholder or other native, whose attendance may be indispensably necessary for the purpose of any authorised public enquiry, or to enable them to perform any part of the public duty under the regulations or instructions from Government or the Board of Revenue; but the collectors are required not to enforce the personal attendance of a principal provided that of an authorised agent be sufficient, and they are subject to prosecution for damages for any infringement of the rules therein laid down. The Association, it is presumed, does not propose the repeal of this part of the law, which, under the restriction therein laid down, has often proved advantageous for the public service; and it has never been known that either any revenue officer abused the power or that any landholder or other person complained in respect thereto. That part of Section X, Regulation I. of 1801, which relates to *benamee* purchase, is virtually repealed: as the penalty and forfeiture of a *benamee* purchase at a revenue sale, have been rescinded by Act XII. of 1841, the power of enquiry in respect to it is necessarily superseded.

The Sections quoted by the Association no where provide for the imprisonment of landholders for arrears of revenue; the law that existed on the subject has long since been repealed—*vide* Section III, Regulation III. of 1794; and even the system of *tullub-chittee-dustuk* or other process of demand on defaulters, is rescinded by Clause 2, Section II, Regulation XI. of 1822. Hence it is difficult to perceive the ground of apprehension of the Association for the safety of the persons of the defaulting landholders for arrears of revenue or other demands.

The last and final suggestion of the Association is that a provision be made "enabling the collector, with the sanction of the superior authority, wherever extensive interests would be endangered or prejudiced by forcing

a sale, to attach the estate as an alternative." In permanently settled provinces, with such extensive advantages in his favor, the proprietor of an estate, not being subject to any natural defect, cannot reasonably ask the officers of Government to undertake by attachment the management of his estate, which he could not himself so manage as to enable him to pay the instalment of revenue due from it. If, on the one hand, the Government are most solemnly to observe the terms of the permanent settlement, the seventh article of which gives a positive and unqualified pledge in respect to the assessment being fixed for ever, irrevocable, and not liable to alteration, the Government, on the other hand, declare that, in the event of any proprietor failing in the punctual discharge of the public revenue, a sale of the whole of the lands of the defaulter, or such portion of them as may be sufficient to make good the arrear, will *positively* and invariably take place. The contract between the parties, the Government and the zemindar, is, that the former is pledged to the fixed nature of the assessment, the latter engages for the punctual discharge of the said assessment, and on failure thereof, the land, the subject of the contract, is to be *positively* sold in satisfaction of the arrear. Now the Association, professedly representing a large landed interest in the permanently settled provinces, perhaps without sufficiently considering its effect on one of the contracting parties—the Government—recommend, in violation of the terms of their mutual contract, the adoption of an intermediate coercive measure, even under circumstances of natural calamity which are expressly referred to in the said Section of Regulation I. of 1793 as no ground for postponement of the sale or recovery of arrears of revenue.

Since the foregoing papers were sent to the press, the following were received :

1. A communication from the Board of Revenue to the Government of Bengal, dated 19th June 1857.
2. A Note by Mr. Stainforth, the second Member of the Board, dated 2nd October 1857.
3. A Petition from the Hindu Association.
4. A Minute of Mr. J. S. Torrens, a Judge of the Sudder Court, dated 13th December 1857.

THE BOARD OF REVENUE.

The Board of Revenue suggest that there should be a provision in the proposed law against exempting from sale, for arrears of revenue, estates, fractional portions of which have been attached by order of the civil court under Clause 1, Section V, Regulation II. 1806. The attachment, they remark, has been ordered merely to protect the interests of a private party, and there seems no reason why the payment of the Government revenue should not be enforced as in other estates not under attachment.

REMARKS.

The reason why estates attached by the revenue officers under orders of the civil courts, are exempted from revenue sale for arrears accruing during the period of attachment until the end of the year in which such arrears accrued, is apparently the hardship of requiring the proprietors to be punctual in paying Government revenue, when they have been deprived of the power of collecting their rents.

By the attachment referred to is intended the sequestration of estates under Section V, Regulation II. of 1806, when the defendant may be unable to give security for the rents he may realise during the continuance of the suit.

The term estate used in Section X, Act I. of 1845, and also in Section XVII of the Bill, is defined by Section II, Regulation XLVIII. 1793, and explained by Section XIII, Regulation VIII. 1800, to be any land subject

to the payment of revenue for which a separate engagement may have been executed to Government by the proprietor, or which may have been separately assessed with the public revenue, although no engagement shall have been executed to Government. Thus, the wording of Section X, Act I. of 1845, taken together with this definition of the term "estate," would hardly justify the construction given by the Sudder Court, and adopted by the late Sudder Board in their circular of the 3rd August 1846. The protection against revenue sale of an estate under attachment, cannot surely, in case of attachment of a portion of an estate, apply to the protection of the whole estate. But the principle which actuates the legislature in exempting an estate under attachment from sale, is equally applicable to a defined portion under attachment as respects that portion, but not to the remainder, as is the case with estates under Butwarrah, when one sharer saves his portion by paying his quota of the revenue, and the shares of the actual defaulters are sold. Without examining the soundness of the principle, that the collection of the public revenue should be suspended, in consequence of litigation between individuals, for the security of one party, it may be observed that, when a putnee or other tenure is under attachment, the collection of the rents due to the superior landlord is not suspended, and such tenure may be sold, whether the whole or any portion of it be under attachment. Nor, in the case of an estate in charge of the receiver of the Supreme Court, is the principle of exemption from revenue sale recognised.

If the principle be adopted with regard to estates, it is by parity of reason applicable to portions under similar circumstances, to meet which an addition may be made to Section XVII of the Bill, by inserting the words "and defined portions of estates."

Mr. H. Stainforth, *second member of the Board of Revenue.*

Mr. Stainforth recommends the introduction of some such provision as the following, namely, "Mehals which were originally parts of an estate, but are now recorded in the towjees or registers in use in the collector's office as separate estates with separate jummas, shall, though not separated in accordance with the law, be held to have been constituted by the act of separation, and to be, separate estates; and their separation shall not be liable to be reviewed or annulled in any court of law." The object of the proposed Section is to provide a legal and practicable course of procedure and to give validity to the titles of several kismuts or shares which were long ago illegally recorded as separate mehals with assigned jummas; because, as the law now stands, commissioners are instructed to lot the whole original estates for sale on arrears of revenue falling on any one of its illegally separated kismuts, provided such a course be not found barred by the previous sale of any such kismuts in realising such arrears, in which latter case the illegal separations are to be treated as estates.

The Lieutenant Governor of Bengal concurs in opinion with Mr. Stainforth that, where kismuts have remained practically separated for many years, say twenty-five years, without objection, the separation should now be acknowledged by law.

Remarks.

The illegal butwarras noticed by Mr. Stainforth, are of two descriptions; the one, where a division has been made both of land and jumma; and the other where there is no division of land, but each sharer collects his portion of the rents from all, or a particular number of, the tenants of the parent estate. There can be no objection to recognise, as suggested by the Lieutenant Governor, the legality of the former description of these illegal separations, which have existed for twenty-five years, the fact of the existence of that state of things for so long a period being a guarantee that the Government interests will not be jeopardised by the continuance of

it. But for the security at once of the Government and of parties who may purchase these shares, a specification of the lands of each kismut should be registered in the collectorate. There are, however, various objections to the same privilege being granted to illegal separations of the second description. A purchaser of such a share at a revenue sale can exercise none of the rights and privileges incident to his purchase, such as raising the rents of ryots or ousting defaulting ryots to make room for better men. But what is most especially to be considered is that, whereas the principle of the permanent settlement is the improvement of estates, this system prohibits such a purchaser from attempting any by introducing indigo, sugar, or other cultivations, because he can consider no part of the land he has purchased his own. A division of the land is therefore most advisable in such cases, and no practice which would form a bar to it should be recognised by the legislature.

The question is not, however, one to be discussed in connection with a proposed Sale Law. It belongs to the law of Butwarra, and should be reserved for consideration whenever a Bill is introduced for amending that branch of the law.

BABOO WOMACHURN ROY.

Baboo Womachurn Roy (on behalf of the Hindoo Association) observes that Section XIV of the Bill will prove very injurious to small shareholders. For instance it will be very hard if an entire estate is sold for arrears notwithstanding that a one-and-a-half pie shareholder has separated his own share and paid revenue for it.

With reference to Section XXIX, which requires a decree to be executed within six months, he submits that a decree-holder may be unable to enforce his decree on account of some inevitable obstruction.

He proposes, with reference to Section XXXIII, that an appellant should be allowed to correct mistakes in his petition to the commissioner; and thinks that the provision in this Section, which states that "no person shall be entitled to contest the legality of a sale after having received any portion of the purchase money," will prove a source of considerable loss, for (to use his own words) "if a possessor of a share worth three-fourths of a pie of a large mehal takes the surplus amount of the purchase money in an illegal sale of such mehal, or the purchaser at auction having persuaded him makes him take money above the value of his three-fourths' pie share, the other shareholders will be prevented from getting their own shares, though the sale has been illegally made. Therefore, if the above law were made to be applicable only to the shares of those partners who actually take more than the price of their own portion, it will not be injurious to any; but if the said law is made applicable to those partners who have not taken the surplus amount, your petitioner cannot tell how many inconveniences will arise from it."

He suggests that Section XXXVI should clearly specify the several descriptions of under-tenures, which should all be required to be registered, and not only the shikmee talooks.

He observes that Section XL prevents the civil court from interfering with decisions of revenue officers regarding registry of talooks; and that, therefore, if a collector does not register a talook for some common reason, the under-tenant will be unable to obtain any remedy for that injury.

Schedule A, he next observes, provides for "purchases" taking effect from the day following that fixed for last day of payment; and in Sections XIV and XLVII it is provided that, if an offer equal to the arrear due up to the date of sale is not made, the estate will not be sold to another party. What the reason of this is he cannot understand, and should, he thinks, be distinctly explained.

CONCLUDING REMARKS.*

Schedule B, he remarks, prescribes twenty-five Rupees as the fee for registering an under-tenure, the annual ent of which does not exceed five hundred Rupees. But as there are numerous under-tenures which pay annual rent from one to fifteen Rupees, he thinks it will be fair to fix the fees ratably, according to the amount of rent.

REMARKS.

The objection as to the want of protection to small shareholders who are not defaulters, but are unable to purchase the remainder of the estate, overlooks the interests of the Government. The Bill proposes that, after a share, whether large or small, has been registered, any share in default shall in the first instance be put up for sale, under Section XIII, and that if such sale fail to realise the amount of arrear due from it, or the arrear be not paid up by the other sharers within ten days, who thereby become owners of the same, in that case only the entire estate shall be sold. The Bill affords two chances at least to the small shareholder, whose cause is advocated by the petitioner, whereas under the present system he has no legal protection whatever from sale. Moreover, the contingency supposed by the petitioner is not very likely to occur in practice.

The petitioner points out the hardship of the procedure regarding appeals to the commissioners and suits in the civil courts for the reversal of sales. The severity of the rule has existed since the enactment of Regulation XI. of 1822; but very few cases, if any, have occurred within these thirty-five years in which the severity has been complained of; besides, this being a rule of procedure, the strictness thereof can never form a just ground of complaint, especially if it be considered that an appeal in a civil court may be lost by one day's procrastination.

These remarks are equally applicable to his objection about the insufficiency of six months for obtaining execution of a decree.

The remaining part of the petition, as it involves no material points, requires no notice.

MR. J. S. TORRENS, *a Judge of the Sudder Court, Calcutta.*

Mr. Torrens having commented on the whole of the principle and details of the Bill, *seriatim*, and his remarks not admitting of much condensation, it has been judged expedient to insert his Minute at length. Such points as may require explanation, will be separately noticed.

Mr. Torrens' Minute on the Sale Law improvement Bill.

THE call made by Government for a report from the Judges of our Court on the proposed Act, was only communicated to me in March last. Since then I have learnt that the matter was not likely to come on before the Legislative Council soon, and I have been so much engaged in the more immediate duties of the Court, that I have had no leisure, except at intervals, to bestow that degree of attention to the subject which its very great importance demands on the part of all those who may be consulted in respect to it. It may first be observed that the members of our Court, in furnishing their several opinions on the Bill, have had a great advantage over others previously consulted, inasmuch as the late period at which the call has been made on them has enabled the Government, by furnishing them with the replies already sent in, to assist them very con-

siderably towards their conclusions on the important changes which the Bill involves. Whilst, however, they have the benefit of this assistance, they become at the same time subject to an accompanying difficulty, which I at all events materially feel, of having to offer opinions on points which have already been dealt with, discussed, and differed in, by the highest authorities in the country. The subject of the Bill, as it relates to sales of landed tenures in Bengal-proper, is one to which I may be allowed to say I have directed much attention throughout a very long service in the Revenue line, when my object has always been in administering any sale-law to do so with what should be the object of every law of the kind, namely, to cause as few sales and transfers of properties as possible.

2. As to the operation of the Bill in this respect and that of securing the rights of all descriptions of occupants of assessed land, it appears that it only repeats and proposes to carry out more really and effectually all that was *intended* by the permanent settlement of Lord Cornwallis in 1793. Indeed, it requires but a very cursory perusal of the Bill, together with the Regulations enacted just at the time (or nearly so) of that settlement, to show that the present insecurity of property in sub-tenures or the liability to the insecurity of the land revenue, treated of in the Bill and in the comments passed upon it, must be attributed to a former and long continued inattention of the then chief controlling revenue authorities and collectors, as well as of our courts of justice, in general, in passing orders which were altogether regardless of the most essential foundations of the settlement, thus allowing the zemindars always to maintain their own privileges, or even to create new and unauthorised privileges without ever enforcing the fulfilment by them of any of the most stringent conditions which the settlement imposed on them, and which, as regarded their own rights and privileges, those of Government, or of the ryots, were the very key-stones of the settlement. It is quite curious to observe how few of the obstacles and objections started to the present Bill could at all appropriately have been so; or indeed to observe how needless in many respects the passing of such a Bill would have been, if all that was intended by the settlement and by the laws enacted for the purpose of carrying it out, had received a greater degree of attention. If, for instance, the zemindars had been obliged to give pottahs to their ryots as provided for in Section LIX, Regulation VIII. of 1793; if at the same time they had been obliged to give in the accounts and papers required by that law, by Regulation XLVIII of the same year, and by continued laws afterwards enacted; if the records and muniments so given in had been properly preserved as required by Regulation XXI. of the same year, duplicates being transmitted to the Board as Regulation XLVIII enjoins; if no separations of estates had been allowed without these conditions being fulfilled; if all decrees of civil courts affecting the settlement had been forwarded to the revenue department in the manner laid down in Regulation IV. of 1793, and that the civil courts, when deciding cases relating to accounts of revenue and rent, had acted up to the intentions of Section XIII, Regulation VIII. of 1794—it is plain that then only would the plan of settlement have been carried out as designed. Instead, however, of any of the provisions I have instanced being attended to, whilst the zemindars have been allowed to evade all the chief conditions the regulations imposed on them, they have been allowed to obtain orders of the revenue authorities and decrees from courts of justice, which, wholly overlooking those conditions, have distracted the whole order of the settlement. The under-holders and ryots chiefly have been the sufferers; but the extent of litigation and want of security to landed property generally, which the first departure from the principles and conditions of the settlement has entailed, has been excessive and continues to be so.

3. To me it appears that the Act now proposed will, by many of its main provisions, afford the best means of remedying some of the evils which have been caused, and of ultimately lessening litigation and rendering more certain and secure the rights of ryots and under-holders; but at the same time it occurs to me that there

are certain objections raised as respects some parts of the Bill, which ought, if possible, to be removed. The principal objections taken to the Bill may be stated briefly as follows :—

First. That working out its provisions would throw such an immensity of labor on the collectors' offices, that business could not be got through.

Second. That endless litigations and harassment would be caused by the enquiries which would have to be instituted.

Third. That the indulgences proposed to be extended to shareholders and under-holders, even if they could, practically speaking, be carried out or afforded, would jeopardise the revenue.

Fourth. That some of the provisions of the law would be quite ineffectual, as a means of realising the revenue, in certain districts where payments are made by numerous petty-holders.

Fifth. That the law would so encourage sub-divisions of estates that it would tend to impoverish the country.

Sixth. That there are certain descriptions of estates, as now entered on the collectors' registers, so constituted that their component shares or under-holdings could not possibly be separated in the manner proposed.

Seventh. That the rules of registration, proposed by the Act for tenures the assessment of which stood fixed under the decennial settlement, would deprive the holders of such tenures of the rights which the settlement gave them.

4. As regards the first of the objections above enumerated, I would premise that I think the great increase of labor, which it is apprehended would accrue to the collectors, is somewhat over-estimated; but if it was found on the first introduction of the Bill, that applications were so numerous as to cause the increase of labor anticipated, considering the great importance of the measure, I do not think it would be too much to expect from Government that they should appoint qualified officers specially for the business, in the manner which was done some years since during the enquiry into rent-free tenures in the settled provinces.

5. I proceed to submit my opinion *seriatim* on the several Sections of the law to which the objections above enumerated have been applied.

Section III. Latest day of payment in permanently settled Districts and in Cuttack.

6. The only difference between this Section and that of the same number in the old law is that this provides the same mode of sale for the non-permanently settled mehals in Cuttack as for permanently settled mehals generally; and it is objected that, taken with Section I, it does not leave the law sufficiently effective for realising revenue from petty mehals in certain districts. This objection would seem to me one which should and could easily be removed. It would be a very tedious matter to collect the revenue from these mehals in the districts referred to, if no other means were allowed, than this general Sale Law. It would therefore, I think, be well to keep up the provisions of Sections XV, XVI, XVII, and XVIII, of Regulation XIV. of 1793, Section IV, Regulation I. of 1801, and of Regulation X. of 1818, so far that the Board of Revenue should have the power of ordering the provisions contained in the above laws to be acted on in any district the peculiar circumstances of which rendered it necessary to have recourse to the issue of dustucks in addition to this process of sale.

Section X. Separation of estates held in common tenancy.

7. The very important and essential change of the existing law, in allowing co-sharers in unpartitioned mehals to save their own shares from sale, was urged by many collectors so far back as 1843 or 1844, if not before that period. The principle is admitted, by the generality of the objectors to the Bill, to be a good

one; but it is contended that there should be a limit to the amount of jumma to which the privilege should be extended. The objections taken to its being extended to all shares of whatever amount of sudder jumma, are that the multiplicity of separate accounts would embarrass the collectors so much that they could not get through their duties, and that in this way, as well as from the encouragement which the privilege would give to sub-divisions of estates, the Government revenue would be rendered more insecure.

8. The want of security to the revenue which is apprehended, and the embarrassment to the collectors, could not, I think, possibly ensue if the limit was fixed at twenty-five Rupees' sudder jumma. On the point of embarrassment to the collector, it is to be recollected that *there are already separate accounts kept of the payments of each shareholder;* and as regards the objection on the point of encouragement to sub-divisions, it may, I think, be considered that a sudder jumma of twenty-five Rupees generally represents a very substantial and manageable mehal, sufficiently so to render the objection of sub-divisions inapplicable. To a sudder jumma *less* than this, I think the objections might perhaps, as regarded the separate payments, apply; but it appears that it would be extremely beneficial at once to give the absolute privilege of separate payments to all shares the jumma of which was not lower than the sum above stated. With a view, however, of preventing hardships to proprietors of smaller shares bearing a sudder jumma less than twenty-five Rupees, avoiding at the same time any possible risk of insecurity to the revenue, there might, it appears, be a supplementary provision which would apply to all these shares, however inconsiderable. This provision should be to the effect that, if any share of an undivided estate of which the jumma was *less than* twenty-five Rupees, was found in arrear at the last day of payment, it should be competent to any one or more of the shareholders of the mehal, *whose jummas were likewise less than twenty-five Rupees*, and whose shares were not in arrear on the last day of payment, at any time before the collector had issued the notice of default or of sale, to pay in the arrear due on the defaulting share or shares; and those recorded shareholders who did so should succeed to the rights held by the defaulters. The privilege of at once making this payment as proposed would only, it is to be observed, extend to those shareholders whose jummas were under twenty-five Rupees, as the others have protection otherwise provided; but this is proposed also because, if the privilege were in respect to these small shares to extend to the larger shareholders, they might make it a means of encroaching on or absorbing the minor shares. It is also, it is to be observed, not proposed that the petty shareholders acquiring as above the defaulting shares, should succeed to any but the rights held by the defaulters over the under-tenures. A provision to the above effect would, it appears, be a great protection to petty shareholders, involve no additional trouble to the collector, and would tend also to counteract the evil of small sub-divisions.

Section XI. Separations of shares consisting of specific portions of mehals.

9. The objections which have occurred and been recorded by revenue officers and others against this Section, correspond with those offered to the foregoing. The limit of the twenty-five Rupees' jumma might, I think, also be introduced into this Section. With respect to either Section, if, after the working of the Bill for some time, the limit was found to be unnecessary, or that it might be reduced in amount of jumma, a further enactment could be passed. With respect to the provision of both these Sections, I think a Clause should be introduced into the Bill which should render it obligatory on the collector to keep a separate book which should apply to the number and jumma of each mehal as *standing on his books or towjee when the Bill commenced to have effect.* In that book all admissions to separate payments should be recorded, a duplicate of the book being kept in the Sudder Board of Revenue; and the Bill should provide that, if at any time the gross revenue as entered to the number on the towjee should become not recoverable on sales of separate shares, then the Government should have the power of lotting and selling the whole jumma irrespective of any partition afterwards made. This provision would act as a safeguard,

CONCLUDING REMARKS.

and meet many of the objections to the Bill; whilst at the same time, with such a safeguard existing, it would seldom if ever be found necessary to resort to the sale it would allow.

Section XII. Summary enquiry by the Collector on applications being made for separate payments such as provided for by Section X and XI of the Bill.

10. An objection chiefly taken to this Section is that there should be no summary enquiry as to possession, inasmuch as the fact of the shareholder having his name registered in the collector's book shows his possession and renders further enquiry needless.

11. It is objected that the enquiry which the collector would have to adopt, would add too much to his work, and involve very considerable dispute and litigation. In respect to these objections, it is to be observed that the fact of any particular parties having their names recorded in the collector's books, as under the existing system, would not be conclusive as to their mere possession even continuing up to the time the application was preferred; and, even having their names recorded and being in possession, in very rare instances would the registry afford any information as to the manner or status of such possession, or the extent of the share. *Some* summary enquiry therefore would always be quite indispensable, before an order for separation of accounts was passed. The Section does not appear to mean that there should always be a summary enquiry necessarily either by deputation to the lands or examination of witnesses, but merely such summary enquiry as would satisfy the collector that no confusion in his office, or clashing of individual claims, would occur, if he passed orders for a separate account. One of the objectors to the summary enquiry which the Section provides, (Mr. Theobald,) starts his objections by stating that, as the fact of a proprietor's name being recorded, as it seems to him, *shows possession*, therefore no further enquiry can be needed. As above shewn, however, the record referred to is not at all conclusive even as to the possession of the party applying; but, be that as it may, the objection of Mr. Theobald seems somewhat contradictorily stated for; soon after starting it, he instances cases of benamee or fictitious registrations, and, in respect to them, claims the right of a European who may be a *de facto* proprietor, and who has designedly recorded the name of a native as proprietor instead of his own, to have a separation of accounts on his (the European's) application. This at once shows, even as the objections are themselves put, that the collector's books cannot without some enquiry be taken as a guide; but it ought most certainly to be a rule that no proprietor who had *not* conformed to the rules laid down in Regulation VIII. of 1800, and applied to have his name registered, could call on the collector for separate accounts, or could object to such account being opened with any other shareholder.

12. In the event of the application for separate accounts being on the grounds mentioned in Section XI of the proposed Act, namely, the possession of a specific portion of land in an estate, and that objections were offered, local enquiry might, no doubt, be unavoidable. But it does not appear, if certain papers were required from an applicant and certain forms to be filled up *at the time* of all these applications, that any enquiry to be made would be difficult or tedious. These forms might be as suggested in the accompanying Appendix marked A.

Section XIII. Sales of separate shares.

13. The only objections which apply directly to this Section are those which would fix a limit. As stated in the remarks on Sections X and XI, it appears this limit would at first at all events be advisable. The Section might, in that case, be modified, and also with regard to the security to be afforded to shareholders who might come under the limit, as suggested in the remarks on Sections X and XI.

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Section XIV. Entire estates may be sold under certain conditions.

14. This Section, it appears, might expediently be enlarged. It at present provides for the power of a collector to sell any estate in its integrity *as it was constituted when the arrear on it accrued*, in the event of sale with exemptions or separations not covering the arrear. To complete the security to the revenue which is intended, I think it would be necessary to provide not merely for the event of the bids not covering the arrear on the estate as it might be constituted when the arrear occurred, but for the deficiency in bids in the particular estate and in all others which formed the original estate when the first separation of accounts was allowed or when the Act first came into operation, notwithstanding any actual butwarrah afterwards made, or any union effected under Regulation XIX. of 1814.

15. On this point, I would refer to the suggestions for registries contained in the concluding portions of my remarks on Sections X and XI. The provision, which is suggested by means of those registries, would bar fraudulent separations and alienations, not immediately *before a sale*, but which might be made (as they generally would be when resorted to) long in anticipation. By the above proposition, it is intended to render all butwarrahs or partitions, which might be effected subsequently to the passing of the Act, ineffective as far as preventing a Government sale of the total jumma as it stood when the Act was passed, provided the whole arrear could not be otherwise realised. It might be objected that this would be depriving landholders of privileges they now possess under Regulation XIX. of 1814. This objection, however, will be found merely nominal. The real object of almost all applications for butwarrahs was to get a separate account. This done, no more attention was paid to get a partition effected. In some cases, where partition was completed, fraud and alienation of the revenue were the objects. This is, generally speaking, all the privilege which would really be removed ; and I would therefore make all partitions effected after the passing of the Act, subject to the one general proviso which I have stated. To do so is only consonant with the terms of Article IX of the Settlement, and Section LXII, Regulation VIII. of 1793. As to the union of estates provided for by Section VI, Regulation XIX. 1814, I would do away with the provision wholly.

Section XV. Deposit for protection of an estate from sale.

16. I conceive the provisions in this Section would be most beneficial in all respects. It would, however, it appears, be requisite not merely that an agreement should be signed making over the securities, but that they should be duly endorsed to the collector for the time being, with an agreement which would preserve the depositor's conditional lien over them. It would also be necessary for working out the plan that there should be an arrangement betwixt the collector's office and the accountant's duly authorised, by which interest on the principal as it fell due from Government should always be paid *at once* by the collector, or renewed notes granted, without, as is sometimes the case, the necessity of sending the papers to the general treasury. I cannot, under this arrangement, see the force of any of the objections which have been offered to the provisions of this Section, either as to the labor entailed on the collector, or in any other respect.

Section XVII. Estates under courts of wards or under attachment.

17. The only alteration I would suggest in this Section, is in respect to the wording. At the last line but one, the words "after the end of the revenue year of account prevalent in the Province" should be inserted. It is no doubt tolerably plain, as the Section stands, what year is intended; but I have found that some of the subordinate local courts have in the present law had misapprehensions on this subject, which have misdirected their decisions on the point.

Section XXI. Order of selling.

18. This Section should be altered so as to provide "that the sales be made in the order in which they *may have been publicly advertised* by the collector." This would sufficiently guard against abuse, and yet not hamper the collector ; but the al-

teration is requisite with reference to a decision of a full bench of this court which annulled a sale though made in the order advertized, because the classification of the kinds of estates had transposed the order on the towjee.

Section XXXV. Rights of a purchaser of a permanently settled estate sold for its own arrears.
Section XXXVI. Registration of old talookdaree tenures.
Section XXXVII. Registration of new talookdaree tenures.

19. Section XXXV and the two following are, it appears, held to contain the most radical of the changes which are proposed by the Bill. They, no doubt, require the fullest consideration; but whatever may be the changes which are apparent, the real effect of their provisions, as it seems to me, will be to restore and carry out the main principles and design of the permanent settlement of Lord Cornwallis, namely, a fixed and certain revenue from the land secured to the state, with preservation of the rights conferred on under-holders and ryots as well as those of the zemindars placed over them. Some of the objections put forward to Section XXXVI apply directly to the details provided by that Section only, and some only to those in Section XXXVII, whilst some apply to all these Sections in common. I wish first to notice the objections which are directed exclusively to Section XXXVI, namely, the rules regarding talookdarees created anterior to the parmanent settlement. It is objected that the law will deprive the holders of these tenures of the rights which the settlement of 1793 guaranteed to them—first, in now rendering a registration of a tenure, in the mode laid down in the Bill, a condition of its continuance; secondly, in the cancelment of the tenure on sale of the parent estate, *if* the tenure be itself in arrear of rent on the latest day of payment, depriving the possessor at the same time of the surplus profits which would formerly have accrued to him, supposing the tenure had been sold on default of payment of its own rents.

20. It does not appear that these objections shew that, in requiring registration of fixed leases and under-tenures, there is any infringement of the rights which were really, and according to the principle of the settlement, conferred on the owners of these tenures. The obligation of registering them or producing their titles, it appears, was always incumbent on such owners from the commencement of the settlement. It was a main provision of Regulation VIII of 1793 that the title-deeds should be produced; and without their production, it would have been impossible for the collectors to make the settlement as laid down in the above law, or determine what under-holdings, as then existing, were to be separated from, and what to remain subject to, the parent zemindaree. The zemindars, by the above Regulation and Regulation XLVIII. of 1793, were bound to produce their accounts to the collectors and register their tenures; and under-holders, as by Section XXV of the latter law, are included. Further provisions on the subject are made in Section XV, Regulation VII. of 1799; and throughout the Regulations, up to the enactment of Regulation XII. of 1817 and IX. of 1833, the obligation has remained equally on the zemindars and the under-holders, to register. There cannot then, it appears, be any infringement of rights in continuing this obligation. Neither does it appear to me that there can be an infringement in the loss which might be incurred by the provisions of the Act in the event of an under-holding been voided when it was in arrear, and the parent mehal sold. If it was voided by sale of the parent estate without the existence and ascertainment of arrear of its own rents, there would necessarily be an infringement; but as under Section VII, Regulation VIII. of 1793 possession is guaranteed only on the condition of payment of rent being made, it does not appear, if an arrear has been found actually due, that the under-holder has been subjected to any infringement of his rights by his tenure falling, on sale of the parent estate for arrears of Revenue, when himself in default; or that he can claim as a right the surplus profits which might have been yielded by sale, for arrear of rent, separately of his own tenures, the condition of holding which essentially was that he was to continue to pay the rent in order to enjoy the tenure. If a surplus *could* be yielded, it would in ordinary cases only be where the holder had willingly allowed the holding to fall into

arrear, and he could not, under the main condition of his tenure, have a right to any benefit or profit on his wilful default, and which would arise by realisation of surplus profits on sale resulting from such default.

21. It is next objected to the provisions of Section XXXVI, that they would give rise to a vast number of false claims against the zemindars to establish a mocurruree title, supported by the usual quantity of false swearing. No doubt, at first there would be some such claims preferred, but their continuance would of course depend on the mode in which the law was administered, whether by the collector in the first instance, or in the ordinary courts, when suits were preferred to contest the collector's awards. The onus of proof of the title to hold at fixed rents, would of course, as at present, rest on the party who preferred the claim. Mere parol evidence would not of course be admissible; and the same principles continuing which have regulated the trial of claims of the kind hitherto, it is not, I think, to be apprehended that parties, not possessing some good and substantial proofs of title, would come forward to any really injurious extent, or that any success would be found to result by means of false swearing.

22. In respect to the provisions of Section XXXVII as well as those of the foregoing Section, the apprehensions of those who are opposed to them are that the work which would be imposed on the collectorates in order that they should complete the enquiries necessary to be made on applications for registration of tenures, whether old or new, so as at the same time to secure the Government revenue, could not practically be performed. As regards the great increase of work, I would in the first place observe, as I did with respect to the provisions of Sections X and XI, that if such was found to be the case, it could be but an evil of temporary duration; and such is the importance of the Bill, and such the importance of rendering tenure of landed property *as secure as it was intended to be* at the settlement, it would, no doubt, be worth while to have extra establishments for the enquiries. Much, however, might be done by provisions in the Bill itself, to assist the enquiry which the collector will have to make, and to place the greater part of the burden of the same, on the applicants themselves. This, I think, could be done by making it incumbent on them, in order to have such enquiry commenced or their applications filed, to supply and fill-in the information required in the accompanying Appendix marked B.

23. Their first having to fill-in this form would operate in several ways to remove the objections I now refer to. It would essentially assist the collector in the enquiries he might find it necessary to resort to, and it would bar the possibility of parties preferring false statements in the course of the enquiry after it should have commenced, or which might vary from statements given in the form; whilst if those given in were shewn in the course of enquiry to be false, or so held by the revenue authorities, there should be a provision in the Bill which should enable them at once to strike off the application.

24. It might, no doubt, be objected that there would be a difficulty in an applicant being able to give the plan required in the last column of the form I refer to, and that altogether the information called for is too voluminous. As to the inability to give the plan, I do not think it would be found to exist in districts where surveys have been made, and where now so many native ameens are competent to make maps laid down by scale and compass.

25. The number of persons so qualified would of course become more numerous owing to the very requirements of the Bill; and an applicant being required to file a plan of the kind is no more, I believe, than is required at home when parties in possession of private property have to seek official aid or authoritative orders for any measures they wish to have effected in respect to such property.

CONCLUDING REMARKS.

26. The giving in of a false or erroneous plan would of course be held as a ground for striking the application off, and I cannot think in any way that the requirement is unreasonable or impracticable of performance. It would, no doubt, entail on an applicant both trouble and expense, but none which he ought not to be ready to undergo for the advantages he would derive; and it appears to me that it has always been too much a part of our system to provide that *all* trouble and expense, even in measures which are really for the benefit of those who apply for them, should rest on the office in which they have to be effected, not on the applicants themselves. As to the information which the statement would require being too voluminous, I have only to say that it is, after all, the same which the collector would eventually have to record before he completed his enquiry as even now provided by the Bill; and every benefit is to be expected both in the matter of assistance to the collector and in that of preventing an influx of crude and ungrounded application, by placing the onus of furnishing the information required on the applicant, and rendering removal of his application from the file a consequence of his doing so in a false or incomplete manner. The collector would in this way only have to attest the accuracy of the information ready at his hand; and if the work was strictly carried out and the forms rigidly required to be correctly given in, the work in the collectorates would be comparatively little.

27. The next question which arises on the Sections referred to, and the immunity which they bestow on a duly registered tenure in the event of a sale for arrears of revenue, is whether the security of the revenue might not become endangered by the provision. This, it appears, would much depend on the degree of efficiency and care with which the enquiry by the collector in the apportionment of the assessment was conducted. It appears to me that, if this enquiry was conducted with proper completeness, no risk would be run of the insecurity apprehended, and that, with the information supplied by applicants in the form and of the nature above suggested, the collectors would have little difficulty in arriving at that completeness. It is apprehended by some of the officers who have written on the subject, that, to secure the Government revenue, it would not unfrequently be necessary to measure and adjust the assessment of the whole parent estate. This, with proper information supplied by the applicant, could, I think, hardly ever be necessary; and where it might possibly be so, would only be, either where the parent estate was very small, or the tenure to be registered very extensive. If the law were introduced, I think the result would be that purchases by Government would almost never occur; but if it is apprehended that they might, owing to the bids *not* realising the arrears of revenue, there might be a provision introduced which would provide that registered tenures should be held subject to re-assessment under the present settlement laws, in the event of the original estate, or any of the estates as entered in the record I have suggested in my remarks on Sections X and XI, failing on sale to realise the gross revenue jumma. I scarcely think this provision, in the case of these registered tenures, is necessary; but as it might set at rest apprehensions, perhaps it would be well to consider the propriety of its introduction as proposed. I believe, however, as I have said, it would be in practice merely nominal, owing to no sales of the kind contemplated occurring.

28. The next point which I would desire to notice, is that referred to in the sixth head of objections as I have classed them in the beginning of my remarks. These objections to the Bill have occurred to some settlement officers who have had experience of the estates to which they refer. These are estates which have become entered on the collector's towjee or rent-roll, all with separate jummas, such jumma of course being the only one at present liable to sale on default of payment of revenue, whilst the lands in the Mofussil are held by tenants who pay portions of the rent of the land tenanted separately to some or all of different proprietors of other jummas, as on the towjee. This confused state of things has arisen owing to illegal separations of jummas effected by the proprietors; but the extent comparatively to which it prevails is so very small that no great-

ly increased difficulties, such as to form any objection to the Bill, could arise from it. It would, however, be necessary that, in the event of applications for separate payments of revenue under Sections X and XI of the Bill, or for registrations under Sections XXXVI and XXXVII, being from parties holding in the estates circumstanced as described, not merely the co-sharers as recorded for one of the estates on the towjee, but all the co-sharers of each of several estates to which the same tenant or tenants paid, should be summoned to the enquiry by the collector ; and the applications, as proposed in the forms I have annexed, should disclose who these parties were.

29. In conclusion, I would only wish to bring to notice that many estates have been re-settled in detail since the decennial settlement, and the jummas payable by ryots and under-holders fixed, either newly, or in acceptation of former fixed jummas, under the terms of settlement ; as for instance in the Pergunnahs of Kedarcoond, Bulrampore, and Kurruckpore, Zillah Midnapore. The Bill contains no provison as to how the jumma and tenures in these estates are to be disposed of, in the event of a sale for arrears of revenue.

(Signed) J. S. TORRENS,

Judge.

13th December 1857.

A

Form to be filled up and information to be given on filing applications for separate accounts under Sections X and XI.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
No. of Mehal at time of decennial settlement and gross amount of Government Revenue then entered.	No. of Mehal and gross amount of Government Revenue as entered at promulgation of new Sale Law.	Share of applicant in the Mehal.	Amount of Government Jumma now paid annually on applicant's share.	No. of other co-sharers with proportionate share of each, distinguishing those registered.	Amount of Jumma payable by each share-holder annually, registered or unregistered.	Collections how made by applicant if khas, the name of the chief agent accountable to applicant, and Cutcherry were held.	If underlet, how underlet, to whom, and place of residence of each lessee, actual or nominal.	Number and names of co-sharers, including applicant whose collections are from the same ryots in common.	Number and names of co-sharers who collect from separate ryots or from specific portions of land in the mehal, if any.	If shares entered in columns 9 and 10 are underlet, how, and to whom?	Amount of annual collections from applicant's share for last 3 years from ryots paying in common, and number of ryots as by Jumma Wasil Bakee herewith.	Amount of ditto ditto ditto from ryots paying only to applicant's share, and number of ryots as by Jumma Wasil Bakee herewith.	Amount of ditto ditto ditto realised from specific lands in applicant's share, if any, and number of ryots as by Jumma Wasil Bakee herewith.	Gross amount of Jumma of all other co-sharers realised from ryots in common.	Ditto ditto from separate ryots, if any.	Ditto ditto from specific mehals, if any.	Number of ryots who hold lands in common in applicant's mehals and pay rents also for the same lands to other mehals and gross amount payable in his mehal, as by Jumma Wasil Bakee herewith.	Name of the other mehals on towjee, proprietors of which also receive from ryots, entered in column 18, and names of proprietors in each.	Names of Pergunnah or Pergunnahs in which applicant's mehal is situate.	Names of Mouzahs in each Pergunnah the whole of which are in one mehal.	Names of Mouzahs, Kismuts of which only are in the mehal, and Kismut of what proportion?	Dates of Cuttahs of Mouzahs and Kismuts of Mouzahs as in columns 21 and 22 filed herewith, and by whom attested.	Dates of collections, accounts of each Mouzah corresponding with abstract information given in columns 12 to 18, and by whom attested, herewith filed.	**If application be for separation of share consisting of specific lands, map of the same showing boundaries of each plot, holding of each ryot, and all lakhiraj land comprised in boundaries to be given, or laid down by scale and compass or by form fixed in Collectorate.**

B.

FORM No. 1.

On filing application for the registration of an Ante-Settlement Tenure.

1	2	3	4	5	6	7	8	9	10	11
Number of Estate or Estates on Collector's Towjee with Sudder jumma of each as existing at decennial settlement within which applicant's tenure is situate.	Number of ditto ditto with Sudder jumma as entered on Collector's Register at promulgation of present Act.	Name of applicant and of co-sharers, if any, in the tenure with extent of share of each.	Amount of fixed jumma asserted to be payable on the tenure.	Date of deed creating the tenure, attested copy being filed herewith: original to be called for.	Names of the Zemindars to whom rent of the tenure has been paid for the last six years and place of residence, and cutcherry where rent received.	Name and place of residence of the agent of each shareholder in the tenure.	Names of Pergunnah and Mouzahs in which tenure is situate and area in each.	Gross area of the tenure as by native chittahs filed herewith.	Names of ryots, and jumma of each as by native collection papers filed herewith.	A map to be filed laid down by scale and compass, giving boundaries of each continuous plot of land comprising the tenure, and all lakhiraj land included, with names of the parties cultivating each plot, and how cultivated. Such names to refer to the same where entered in the chittahs and collection papers.

B.

Form No. 2.

On filing application for Registration of a new Tenure.

1	2	3	4	5	6	7	8	9	10	11
Number of Estate or Estates on Collector's Towjee with Sudder jumma of each as existing at decennial settlement within which applicant's tenure is situate.	Number of Ditto with Sudder jumma as entered on registry at promulgation of the present Act.	Names of applicant and of co-sharers, if any, in the tenure with extent of share of each.	Amount of rent payable as the jumma of the tenure or farm.	Date of deed creating the tenure or farm.	Names of the Zemindar or Zemindars who have received the rents for the last six years classified according to entry in columns 1 and 2, with place of residence and of cutcherry where rent received.	Names and places of residence of each sharer in the farm or tenure and extent of the rights of each.	Names of Pergunnah and villages where tenure situate with area in each village.	Gross area of tenure as by native chittahs filed herewith.	Names of ryots, and jumma of each as by native collection papers filed herewith.	A map to be filed laid down by scale and compass, giving boundaries of each continuous plot of land comprising the tenure, and all lakhiraj land included, with names of the parties cultivating each plot, and how cultivated. Such names to refer to the same where entered in the chittahs and collection papers.

CONCLUDING REMARKS.

Observations on Mr. Torrens' Minute.

There are many valuable remarks in the foregoing Minute of Mr. Torrens, that render it deserving of careful consideration.

At the outset he points out the security intended to be given to the tenants at large by the permanent settlement, and considers the Bill calculated, in its main provisions, to afford the best means of remedying some of the existing evils, and of ultimately lessening litigation and securing to ryots and under-tenants the enjoyment of their rights.

He classes under seven heads the several objections to the provisions of the Bill, and records his opinion in respect to them *seriatim.*

The first objection he notices is in regard to Section III of the Bill, the grounds of which have already been adverted to in the observations made on the remarks in connection with that Section. Mr. Torrens thereupon suggests that the provisions of Sections XV, XVI, XVII, and XVIII, of Regulation XIV. of 1793, Section IV, Regulation I. of 1801, and of Regulation X. of 1818, be acted upon so far that the Board of Revenue should have the power of ordering the provisions contained in the above laws to be in force in any district, the peculiar circumstances of which rendered it necessary to have recourse to them. It may however be remarked that, if such coercive measures as provided therein can consistently with the terms of the permanent settlement be retained, (a doubtful point, as shewn in the preceding pages,) it will be more just and equitable to pass a special law for particular districts, with a proviso for *estafa* on the basis of Act VIII. of 1846, now applicable to the North-Western Provinces, instead of continuing an unconstitutional power in the hands of the local revenue authority.

In regard to the provisions of Sections X and XI of the Bill, on the separation of accounts in respect to the payment of revenue, Mr. Torrens generally agrees with the provisions of the Bill, except in making a suggestion to limit the right of separation to sudder jummas above twenty-five Rupees. The objections to such limitation on the ground of its impracticability, have already been shewn in the previous part of this paper, and it is not necessary to repeat them.

Regarding his scheme for shares paying less than twenty-five Rupees, Mr. Torrens thinks that, if any share of an undivided estate of which the jumma was less than twenty-five Rupees was found in arrear, on the last day of payment, it should be competent to any one or more of the shareholders of the mehal whose jummas were likewise less than twenty-five Rupees, and whose shares were not in arrear on such last day, to pay in, at any time before the collector has issued the notice of default or of sale, the arrear due on defaulting shares ; and he suggests that the recorded shareholders who did so, should succeed to the rights held by the defaulters.

This suggestion is liable to exception on the ground that such transfer, without ascertaining the value of the defaulters' share by the test of a public sale, would not only be contrary to the provision of Section VII, Regulation I. of 1793, but perhaps deprive an innocent and unfortunate sharer of the value of his share and give its benefit to a solvent sharer, without any consideration to the defaulter. The solvent sharer himself would at a public sale have given some value for the defaulting share over the amount of public revenue due from it, and even that would be some advantage to the defaulter. Full justice, however, cannot be done him without putting up his share to auction.

With the exception of some verbal alterations suggested, Mr. Torrens generally concurs in the provisions of the Bill, as far as paragraph 27 of his Minute. He proposes the adoption of his forms A, B 1, and B 2,

to meet the requirements of the Bill, which may with some slight modifications be introduced with advantage to the scheme of the Bill; but this being a matter of detail, it need not be entered into here.

In paragraph 28 of his Minute, Mr. Torrens points out certain estates which have been illegally entered in the collector's towjee with separate jummas, while the lands in the Mofussil are held by tenants who pay portions of the rents of their tenancies separately to some or all of different proprietors of other jummas as recorded in the towjee. But as this point, mooted by Mr. Stainforth, the second member of the Board, has been touched upon in an immediately preceding part of this paper, it is only necessary to refer to those observations.

The last and concluding remark in the Minute is, that many estates having been re-settled in detail since the decennial settlement, the jummas payable by ryots have been fixed in the settlement record, and the Bill contains no provision as to how the jummas and tenures in these estates are to be treated, in the event of a revenue sale. The settlement record will always be good evidence in support of any claim which the ryots may have; but the settlement officer could neither give, nor intended to give, a fixed nature to the rent which the tenure itself did not possess. This point will of course be decided by the collector when such tenure is offered for registry, or by the ordinary courts, when the point is brought to its cognizance. It is for the judicial tribunals to dispose of such questions when individually brought forward before them. The immunity that may be given to one, may not be due to another tenure; each case must be decided on its merits, as no general rule can be made applicable to all; it is not necessary to introduce any special provisions on the point in the Bill.

In bringing these remarks to a conclusion, the writer cannot avoid reflecting that, though it is a pleasure to an author to arrive at the end of his labor, such is not the situation of a reviewer of the opinions of others, when he perceives his task drawing to a close. The excitement of criticising begins to vanish, and his mind is agitated by a consideration of the reception of his review by those whose opinions he has canvassed.

When he beholds the array of private individuals and public officers, including the highest authorities in the Presidency, among whom are not a few whom he has the honor to reckon as his personal friends, and many for whose talents and information he has the highest respect, his apprehensions of having given offence to any of them are calmed by the conviction that he has aimed to express his honest opinion on all points connected with the provisions of the Bill, with becoming firmness, and in respectful and courteous language.

The aim of the writer has not been the attainment of a controversial victory, but to induce a scrutinising investigation into the merits of many propositions in the Bill, independently of any other consideration. If what has been advanced in these pages cannot stand the test of discussion, he will most cheerfully renounce the views he has endeavoured to support.

He now takes leave of his subject, begging the indulgence of those who may honor these pages with a perusal for the imperfections which they cannot fail to perceive. He claims this consideration at their hands on the ground of his peculiar situation. Having from his official connection had some hand in framing the Bill, he has undertaken the responsibility of minutely investigating, in his private capacity, without the sanction of superior authority, both the provisions of the Bill and the opinions they have elicited from public officers and others. It may thus appear that the writer has been anxious to comment on the opinions of other functionaries of Government, without rendering himself liable to censure for the freedom of his remarks. He hopes, however, to escape such an imputation by the respect he has every where paid to their opinions, even when he has doubted the correctness of them. He flatters himself that there is nothing in his strictures, which can

fairly be construed into unmindfulness of the worth and talents of those functionaries, and their inclination for the protection of the rights and privileges of all classes of landholders and under-tenants.

Written as these pages have been under the incessant pressure of business, and in a foreign language, the writer is not without the expectation that they will be received with a favor proportioned to the importance of the scheme of the Bill rather than to their literary merits, to which he makes no pretension.



[The amendments are printed in italics. The words in the margin are those of Act I of 1845 which have been omitted.]

A
BILL
TO

[1]*Improve the law relating to sales of Land for arrears of Revenue in the Bengal Presidency.**

[1]An Act to amend Act No. XII of 1841, entitled "An Act for "amending the Bengal Code in regard to Sales of Land for "Arrears of Revenue."

[2]Whereas it is found expedient to amend the existing law for he realization of the Land Revenue :

Preamble.

[2]WHEREAS *it is expedient to discontinue the practice of obtaining the previous sanction of the Board of Revenue to sales of estates for arrears of Revenue, or other demands of Government, in the Province of Cuttack : and whereas it is just that a person having a lien upon an estate, and paying the money necessary to protect it from sale for arrears of Revenue, should be reasonably secured : and whereas it is expedient to afford sharers in estates who duly pay their shares of the Sudder jumma of their estates, easy means of protecting their shares from sale by reason of the default of their co-sharers : and whereas it is expedient to afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of Revenue by reason of the neglect or fraud of their agents ; and whereas it is expedient to enforce the registration of dependent talooks existing at the time of settlement, and to give absolute security to such talooks when so registered : and whereas it is expedient to protect the holders of under-tenures created in good faith, not resumable by the grantors or their repre-*

* The Bill, as here printed, shows the amendments made upon Act I of 1845.

sentatives, and held at rents fully sufficient for the security of the public Revenue, from loss by the avoidance of their tenures on the occasion of a sale of the superior estate for arrears of public Revenue, for which such holders may not be in any degree responsible; and it is therefore proper for the above and other purposes to improve the law relating to sales of land for arrears of Revenue in the Bengal Presidency : It is enacted as follows :—

I. [1]It is hereby enacted that from the last day of February 1845, the third and following Sections of Act No. XII of 1841 are repealed.

Laws repealed.

I. Act I of 1845, *except in so far as it repeals other laws and except in regard to sales made or advertized, suits commenced, and acts done under authority thereof ; Regulation X of* 1818 *; and Sections XV, XVI, XVII, and XVIII of Regulation XIV of* 1793, *are hereby repealed.*

[2]And it is hereby enacted that

What is an arrear of Revenue.

II. [2]If the whole or a portion of a kist or instalment of any month of the era, according to which the settlement and kist bundee of any Mehal have been regulated, be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of Revenue.

And it is hereby enacted that

Sudder

Latest day of payment in permanently settled Districts and in Cuttack.

III. [3]Upon the promulgation of this Act, the[4] Board of Revenue at Calcutta shall determine upon what dates all arrears of Revenue and all demands, which by the Regulations and Acts in force are directed to be realized in the same manner as arrears of Revenue, shall be paid up in each per-

manently settled District[1] under their jurisdiction, *and in each of the Districts not permanently settled in the Province of Cuttack*; in default of which payment the estates in arrear in those Districts, except as hereinafter provided, shall be sold at public auction, to the highest bidder. And the said Board shall give notice of the dates so fixed in the Official[2] *Gazette*, and shall direct corresponding publication to be made, as far as regards each District in the language of that District, in the Office of the Collector[3] or other Officer duly authorized to hold sales under this Act, in the Courts of the Judge, Magistrate, (or Joint Magistrate, as the case may be,) Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, and at every Thannah Station of that District; and the dates so fixed shall not be changed except by the said Board by advertizement and notifications, in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

Latest day of payment in other Districts

IV. [4]*In the Province of Benares and* in Districts not permanently settled,[5] *with the exception of the Districts* in the Province of *Cuttack*,[6] no sale shall take place for arrears of Land Revenue or other demands of Government without the special sanction of the[7] Board of Revenue previously obtained in each several case of sale. Provided that the said Board at the time of authorizing such sale shall fix the latest day on which in each case such arrears or demands shall be received.

[1] Or Zillah

[2] Gazette

[3] or Deputy Collector

[4] And it is hereby enacted that

[5] and

[6] Benares

[7] Sudder

[1]and it is hereby enacted that no estates

Proviso in the case of certain descriptions of arrear.

V. Provided always,[1] *that no estate, and no share or interest in any estate,* shall be sold for the recovery of arrears or demands of the descriptions mentioned below, otherwise than after a notification in the language of the District, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed for a period of not less than fifteen clear days preceding the date fixed for payment, according to Section III or *Section* IV of this Act as the case may be, in the Office of the Collector or other Officer duly authorized to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertized lies, in the Courts of the Principal Sudder Ameens and Sudder Ameens of the District, and in the Moonsiff's Court and Police Thannah of the Division in which the estate to which the notification relates, or a part of it, is situated, the same to be certified by the receipt of the Officer at whose Office such notification may have been affixed; and also at the Cutcherry of the Malgoozar *or owner* of the estate, or at some conspicuous place upon the estate, the same to be certified by the peon or other person employed for the purpose.

First.—Arrears due from estates in the Province of Benares.

Secondly.—Arrears due from estates not permanently settled, *other than estates in the Province of Cuttack.*

Thirdly.—Arrears other than those of the currrent *year* or of the *year immediately* preceding.[1]

Fourthly.—Arrears due on account of estates other than that to be sold.

Fifthly.—Arrears of estates under attachment by order of any Judicial authority.

Sixthly.—Arrears due on account of Tuccaveo, Poolbundee, or other demands not being Land Revenue, but recoverable by the same process as arrears of Land Revenue.

Notifications of sale to be issued, and no tender after latest day of payment to stop the sale.

VI. [2]The Collector or other Officer duly authorized to hold sales under this Act shall, as soon as possible after the latest day of payment fixed in the manner prescribed in Section III or *Section* IV of this Act, issue notifications in the language of the District, to be affixed in his own Office and in the Court of the Judge of the District, and to be published in the Official[3] *Gazette*, specifying the estate or estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than fifteen or more than thirty clear days from the date of affixing the notification in the Office of the Collector or other Officer as aforesaid. And, except as hereinafter provided, all estates so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the

[1] year

[2] And it is hereby enacted that

[3] Gazettes

presence of the Collector or other Officer as aforesaid, and shall be sold to the highest bidder. And no payment, or tender of payment, made[1] *after* sunset of the said latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion.

Notice to Ryots, &c.

VII. [2]Whenever an estate is notified for sale as provided by Section VI of this Act, the Collector or other Officer as aforesaid shall affix a proclamation in the language of the District, in his own Office, and as soon thereafter as may be in the Moonsiffs' Courts and Police Thannahs within which the estate, or any part of it, is situated, and also at the Cutcherry of the Malgoozar *or the owner* of the estate, or at some conspicuous place upon the estate, forbidding the ryots and under-tenants to pay rent to the defaulting proprietor[3] from the date of the day after that fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums paid after the date aforesaid.

Claims against Government not to invalidate a sale.

VIII. [4]No claim to abatement or remission of Revenue, unless the same shall have been allowed by the authority of Government,[5] *and no* private demand or cause of action whatever held or supposed or be held by any defaulter against Government, shall bar[6] or render *void or voidable* a sale under this Act[7]; nor shall the plea that money belonging to the defaulter, and sufficient to pay the balance

[1] subsequent to

[2] And it is hereby enacted that

[3] or Proprietors

[4] And it is hereby enacted that

[5] nor any

[6] a sale,

[7] void or voidable;

or part of it, was in the Collector's hands, bar[1] or render *void or voidable* a sale under this Act,[2] unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, *or after the written agreement provided for in Section XV of this Act*, the Collector shall have neglected, or refused on insufficient grounds, to transfer it to the credit of the estate.

[1]a sale

[2]void or voidable,

Deposits receivable from persons not proprietors.

IX. [3]*The Collector or other Officer as aforesaid* shall, at any time before sunset of the latest day of payment *determined according to Section III or Section IV of this Act*, receive as a deposit from any[4] *person* not being a proprietor of the estate in arrear, the amount of the arrear of Revenue due from it, to be carried to the credit of the said estate at sunset as aforesaid, unless before that time the arrear shall have been[5] *paid by a defaulting* proprietor of the estate. And in case the[6] *person* so depositing, whose money shall have been credited to the estate in the manner aforesaid, shall be a[7] *party* in a suit pending before a Court of Justice for the possession of the same or any part thereof, it shall be competent to the[8] *said Court* to order the said party to be put into temporary possession of the said estate *or part thereof*, subject to the rules in force for taking security in the case of[9] *parties in Civil suits*. And if the[10] *person so* depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said[11] *person*, which would have

[3]And it is hereby enacted that Collectors

[4]party

[5]liquidated by a

[6]party

[7]plaintiff

[8]Judge of the Zillah in which such estate is situated,

[9]appellants and defendants.

[10]party

[11]party

been endangered or damaged by the sale of the estate, *or which he believed in good faith would have been endangered or damaged by such sale*, he shall be entitled to recover the amount of the deposit, with *or without* interest *as the Court may determine*, from the[1] *proprietor* of the said estate. *And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate, the amount so credited shall be added to the amount of the original lien.*

[1] proprietors

Separation of shares held in common tenancy.

X. When a recorded sharer of a joint estate held in common tenancy, desires to pay his share of the Government Revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the extent and nature of the interest held in the estate by the applicant. The Collector will then cause to be published in his own Cutcherry, in that of the Judge, Magistrate (or Joint Magistrate, as the case may be), Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, and in the Police Thannahs in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him. If within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector will open a separate account with the applicant and will credit separately to his share all payments made by him on account of it. The date on which the Col-

lector records his sanction to the opening of a separate account, shall be held to be that from which the separate liabilities of the share of the applicant commence.

Separation of shares consisting of specific portions of land.

XI. When a recorded sharer of a joint estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government Revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of Sudder jumma heretofore paid on account of it. On the receipt of this application, the Collector will cause it to be published in the manner prescribed for publication of notice in the last preceding Section. In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector will open a separate account with the applicant, and will credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account, shall be held to be that from which the separate liabilities of the share of the applicant commence.

Summary enquiry by the Collector.

XII. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less than,

*or is of a different nature from, that claimed by him, the Collector will institute a summary enquiry into the fact of possession, and if he be satisfied that the applicant is really in possession of the share as claimed by him, he will open a separate account for his share as directed in one or other of the last two preceding Sections. If, in the case of a claimant of specific land, the objection be that the jumma alleged by the applicant to be the separate jumma of his specific share of the lands of the estate is not the jumma which has been recognized as such by the other sharers, the Collector will make a summary enquiry into the fact, and will reject or admit the application. The orders of the Collector under this Section shall be subject to appeal to the higher Revenue Authorities in regular course, and shall be subject to reversal or alteration by a regular suit in the Civil Courts, provided that such *suit shall have been instituted within one year from the date of the final award of the Revenue Authorities, but not otherwise.*

Sale of separate shares.

XIII. Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of Revenue, the Collector in the first place shall put up to sale only that share, or those shares, of the estate from which, according to the separate accounts, an arrear of Revenue may be due. In all such cases notice of the intention of excluding the share or shares from which no arrear is due, shall be given in the advertizement of sale prescribed in Section VI of this Act.

The share or shares sold, together with the share or shares excluded from the sale, will continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of jumma assigned thereto.

Entire estate may be sold under certain conditions.

XIV. If in any case of a sale held according to the provisions of the last preceding Section, the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector shall stop the sale and shall declare that the entire estate will be put up to sale for arrears of Revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share. If such purchase be completed, the Collector or other Officer as aforesaid shall give such certificate as is provided for in Section XXVII of this Act to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale. If no such purchase be made within ten days as aforesaid, the entire estate shall be sold after the notification and in the form prescribed in Section VI of this Act, in the same manner as if the entire estate had been in arrear after the latest day of payment.

Deposit for the protection of an estate from sale.

XV. If any recorded proprietor or copartner of an estate shall deposit with the Collector money, or Govern-

ment Securities endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the jumma of the entire estate, and authorizing the Collector to apply to the payment of any arrear of Revenue that may become due from that estate the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of Revenue due from the said estate not being paid before sunset of the latest day of payment fixed under Section III or Section IV of this Act, the Collector shall apply to the payment of such arrear the said money or securities, or such part thereof or of any interest due on the said securities as may be necessary, and for this purpose the Collector shall first apply any money that may be in his hands, and any interest that may be due upon such securities. And so long as any money or securities as aforesaid shall remain and be available as aforesaid, the estate for the protection of which the said deposit was made shall be exempted from sale for arrears of Revenue.

Withdrawal of the deposit.

XVI. It shall be competent to the person making a deposit under the provision of the last preceding Section, or his representative or assignee, at any time to withdraw the deposit, and to revoke the pledge of the same; and from the date of such withdrawal and revocation the estate shall be subject to the ordinary rules relating to sales for arrears of Revenue.

(*Section X of Act No. I of 1845.)
'And it is hereby enacted that

Estates under Court of Wards or attachment.

*XVII**. 'No estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards, and no estate, the sole property of a minor or minors, and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation VI. 1822, shall be sold for arrears of Revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them, shall have attained the full age of eighteen years. And no estate held under attachment by the Revenue Authorities, otherwise than by order of a Judicial Authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no estate held under attachment by a Revenue Officer, in pursuance of an order of a Judicial Authority, shall be liable to sale for the recovery of arrears of Revenue accruing during the period of such attachment, until after the end of the year in which such arrears accrued.

(†Section XI of Act No. I of 1845.)
'And it is hereby enacted that

Estates may be specially exempted from sale.

XVIII†. 'It shall be competent to the Collector, at any time before the sale of an estate shall have commenced, to exempt such estate from sale; and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate shall have commenced, to exempt such estate from sale, by a special order to

the Collector to that effect in each case; and no sale of an estate shall be legal if held after the receipt of an order of exemption in respect to such estate.

Proviso.

Provided, however, and it is hereby enacted, that the Collector or Commissioner shall duly record in a proceeding the reason for granting such exemption; and provided also, that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector of the order for exempting it from sale.

(*Section XII of Act No. I of 1845.)
[1] And it is hereby enacted that
[2] or other Officer duly authorized by Government in that behalf

[3] Sudder

Sales where to be made.

*XIX**. [1]Sales shall ordinarily be made by the Collector[2] in the Land Revenue Cutcherry at the Sudder Station of the District; provided, however, that it shall be competent to the[3] Board *of Revenue* to prescribe a place for holding sales other than such Cutcherry whenever they shall consider it beneficial to the parties concerned.

(†Section XIII of Act No. I of 1845.)
[4] And it is hereby enacted that
[5] or other Officer as aforesaid

Adjournment of sales.

XX†. [4]In case the Collector[5] shall be unable from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by a

written proclamation stuck up in his Cutcherry, and so on, from day to day, until he shall be able to commence upon, or to complete the sale; but, with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

(*Section XIV of Act No. I of 1845.)
[1]And it is hereby enacted that

[2]registers

[3]XV

*XXI.** [1]On the day of sale fixed according to Section VI of this Act, sales shall proceed in regular order; the estate to be sold bearing the lowest number on the Towjee or[2] *register* in use in the Collector's Office of the District being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other Officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so on default of deposit, as provided in Section[3] *XXII* of this Act.

Order of selling.

(†Section XV of Act No. I of 1845)
[4]And it is hereby enacted that

XXII.† [4]The party who shall be declared the purchaser of an estate at any such public sale as aforesaid, shall be required to deposit immediately, or as soon after the conclusion of the sale of the estate as the Collector may think necessary, either in Cash, Bank of Bengal Notes or Post Bills, or Government Securities duly endorsed, twenty-five percent. on the amount of his bid, and in default of such deposit, the estate shall forthwith be put up again and sold

Deposit on account of purchase money.

(‡Section XVI of Act No. I of 1845)
[5]And it is hereby enacted that

XXIII‡ [5]The full amount of purchase-money shall be made good by the purchaser

Full payment of purchase-money

before sunset of the thirtieth day from that on which the sale of the estate bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first Office-day after the thirtieth: and in default of payment within the prescribed period as aforesaid, then and afterwards as often as such default shall occur, the deposit shall be forfeited to Government, the estate shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate, or to any part of the sum for which it may subsequently be sold; and in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public Revenue, and it shall be so levied and credited to the defaulting proprietor of the estate sold; and if default of payment of purchase-money shall have occurred more than once, the defaulting bidders shall be held jointly and severally responsible for such difference to the extent of the amount of their respective bids. Provided always, that every such re-sale

Proviso 1st.

shall be made after notification and in the forms prescribed by Section VI of this Act; and that such notification shall not be issued until the expiration of three clear days after the day on which the default shall have occurred. Provided also

Proviso 2nd.

that payment, or tender of payment, by or on behalf of the proprietor, of the arrear for which the estate was first sold and of

the arrear which may have subsequently become due, if such payment or tender of payment be made before sun-set of the day preceding the day of the notification of re-sale, and after the defaulting purchaser shall have made the deposit required by Section[1] *XXII* of this Act, shall bar such re-sale

XV

(*Section XVII of Act No. I of 1845.)
[2]And it is hereby enacted that

*XXIV.** [2]It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act if preferred to him on or before the fifteenth day from the date of sale, reckoning as in Section[3] *XXIII*, or if preferred to the Collector for transmission to the Commissioner on or before the tenth day from the day of sale, and not otherwise : and the Commissioner shall be competent, in every case of appeal so preferred, to annul any sale of an estate made under this Act, which shall appear to him not to have been conducted according to the provisions of this Act, awarding at the same time to the purchaser a payment from the proprietor of any moderate compensation for his loss, if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed *the* interest, at the current rate of Government Securities, on the amount of deposit or balance of purchase-money during the period of its being retained in the Collector's Office ; and the order of the Commissioner shall, in such cases, be final

Appeals.

XVI

(†Section XVIII of Act No. I of 1845.)
[4]And it is hereby enacted that

XXV.† [4]It shall be competent to the Commissioner of Revenue, on the ground of

Annulment of sale in special cases.

hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale and to represent the case to the[1] Board of Revenue, who, if they see cause, may recommend to the local Government to annul the sale; and the local Government in any such case may annul the sale and cause the estate to be restored to the proprietor on such conditions as may appear equitable and proper.

[1] Sudder

(*Section XIX of Act No. I of 1845.)
[2] And it is hereby enacted that
[3] XVI

*XXVI.** [2]All sales of which the purchase-money has been paid up as prescribed in Section[3] *XXIII* of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the thirtieth day from the day of sale, reckoning the said day of sale as the first of the said thirty days. And sales against which an appeal may have been preferred, and the appeal dismissed by the Commissioner, shall be final and conclusive from the date of such dismissal, if more than thirty days from the day of sale, or if less, then at noon of the thirtieth day as above provided.

Sales when final.

(†Section XX of Act No. I of 1845.)
[4] And it is hereby enacted that

XXVII.† [4]Immediately upon a sale becoming final and conclusive, the Collector or other Officer as aforesaid shall give to the purchaser a Certificate of title in the[5] *form prescribed in Schedule A annexed to this Act*. And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate *or share of an estate* sold being vested in the person or persons named from the date specified: and the Collector shall also notify such

Certificate of sales

[5] following form:

I certify that A. B. has purchased at Public Auction under Act No I of 1845, Mehal C, and that his purchase has taken effect on and since the — day of —— (being the date of the day after that fixed for the last day of payment.)

(Signed) D. E., *Collector.*

transfer by written proclamation in his own Cutcherry, and in those of the Moonsiff and Darogah of the[1] *jurisdiction* within which any part of the estate *or share of an estate* sold shall be situated, and also at the Cutcherry of the Malgoozar[2] *or owner of the estate, or share of an* estate, or on some conspicuous place on the estate, *or share of an estate*.

[1] jurisdictions

[2] of the

(*Latter part of Section XX of Act I of 1845)

Application of purchase-money.

XXVIII.* *The Collector* [3]shall apply the purchase-money first to the liquidation of all arrears due[4] *from* the *estate or share sold upon the* latest day of payment; and secondly, to the liquidation of all outstanding demands debited to the[5] *estate or share of an estate* in the public accounts of the District, holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate *or share of an estate* sold, to be paid to *his or* their receipt on demand in the manner following: to wit, in shares proportioned to their recorded interest in the estate *or share of an estate* sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt.

Proviso.

Provided that, if[6] *before* payment *to the late proprietor or proprietors* of any surplus that may remain of the purchase-money,[7] the same[8] be claimed by[9] *any creditor* in satisfaction of[10] *a debt*, such surplus shall not be payable to[11] such claimant, nor shall it be withheld from the proprietor[12] except under precept[13] *of a Civil Court*.

[3] and

[4] upon

[5] Muhal

[6] prior to

[7] after liquidation of all Government arrears and dues to the proprietor of the estate sold, or his representative,

[8] may

[9] creditors

[10] debts due by him to them, or by any one creditor,

[11] any

[12] by attachment,

[13] and in satisfaction of decrees of Court for such debts. And if the balance of purchase-money have in any such case been paid away in liquidation of the proprietor's just debts by order of any Court, and a decree shall afterwards pass for annulling the sale, the proprietor shall not be restored to possession until the amount so paid away be returned by him with interest.

Effects of annulment by decree of Court of sales under this Act.

XXIX. ***If a sale made under this Act be annulled by a final decree of a Civil Court, execution of such decree must be obtained before six months after the date thereof; otherwise the party obtaining the decree shall lose all benefit therefrom. And when execution of such a decree is duly obtained, the party obtaining it shall not be restored to possession, until any amount of surplus purchase-money that may have been paid away by order of a Civil Court be repaid by him, with interest at the highest current rate of Government Securities. And if such party shall neglect to pay any amount so recoverable, within six months from the date of such final decree, he shall lose all benefit therefrom.***

No suits on the ground of *benamee* purchase.

*XXX.** [1]Any suit brought to oust the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person, not the certified purchaser, *or on behalf partly of himself and partly of another person,* though by agreement the name of the certified purchaser was used, shall be dismissed with costs

Notification of annulment of sale

XXXI.† [2]The annulment [3]by a Commissioner *or by Government of a sale made under this Act* shall be publicly notified by the Collector or other Officer as aforesaid in the same manner as the becoming final and conclusive of sales is required to be notified by Section[4] *XXVI* of this Act, and the amount

(*Section XXI of Act No. I of 1845.)
[1]And it is hereby enacted that

(†Section XXII of Act No. I of 1845.)
[2]And it is hereby enacted that [3]of a sale

of deposit and balance of purchase-money shall be forthwith returned to the purchaser, with interest thereon at the highest rate of the current Public Securities.[1]

XXXII.* [2]The party certified as the [3]proprietor of an estate *or share of an estate* by purchase[3] *under this Act* shall be answerable for all instalments of the Revenue of Government which may fall due subsequently to the latest day of payment aforesaid.

Liability of purchaser

XXXIII.† [4]No sale for arrears of Revenue or other demands realizable in the same manner *as arrears of Revenue are realizable,* made after the[5] *passing* of this Act, shall be[6] *annulled* by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act :[7] *and no such sale shall be annulled upon such ground, unless such ground* shall have been declared and specified in an appeal made to the Commissioner under Section[8] *XXIV* of this Act and[9] *no suit to annul a sale made under this Act shall be received by any Court of Justice unless it shall* be instituted within one year from the date of the sale becoming final and conclusive as provided in Section[10] *XXVI* of this Act . and no person shall be entitled to contest the legality of a sale after having received any portion of the purchase-money.

Jurisdiction of Civil Courts in suits to amend sales.

Proviso

Provided, however,[11] that nothing in this Act contained shall be construed to debar any person con-

[1]from the dates on which they were respectively paid in to the date on which the refund is actually made.

(*Section XXIII of Act No. I of 1845.)
[2]And it is hereby enacted that

[3]at a public sale for the recovery of arrears of Revenue

(†Section XXIV of Act No. I of 1845.)
[4]And it is hereby enacted that

[5]taking effect
[6]set aside

[7]and except the contravention thereto

[8]XVII
[9]except the action in the Civil Court

[10]XIX

[11]and it is hereby enacted

sidering himself wronged by any [1]act or *omission* connected with a sale under this Act, from his remedy in a personal action for damages against the[2] *person* by whose act or omission he considers himself to have been wronged.

*XXXIV.** [3]In the event of a sale being[4] *annulled* by a final decree of a Court of Justice, the purchase-money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current Public Securities.

If sale annulled, purchase-money to be refunded.

XXXV.† [5]The purchaser of an *entire* estate sold under this Act for the recovery of arrears due on account of the same, in the permanently settled Districts of Bengal, Behar, Orissa, and Benares, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled[6] *to avoid and annul* all under-tenures[7] and *forthwith* to eject all[8] *under-tenants*, with the following exceptions :

Rights of a purchaser of permanently settled estate sold for its own arrears.

First. [9]Istemrarce or Mocurrerree *tenures which where held* at a fixed rent more than twelve years before the permanent settlement, *which have been duly registered under Section XXXVI of this Act, and whereon no arrear of rent was due on the latest day of payment of Revenue as fixed under Sections III and IV of this Act.*

Secondly. Tenures existing at the time of[10] settlement, which have not been, or

[1]circumstance

[2]individual

(*Section XXV of Act No. I of 1845.)

[3]And it is hereby enacted that

[4]reversed

(†Section XXVI of Act No. I of 1845.)

[5]And it is hereby enacted that

[6]after notice given under Section X Regulation V. 1812, to enhance at discretion, (any thing in the existing Regulations to the contrary notwithstanding) the rents of

[7]in the said estate,

[8]tenants thereof

[9]Tenures which were held as

[10]the Decennial

may not be, proved to be liable to increase of assessment on the grounds stated in Section LI Regulation VIII of 1793, *which shall have been duly registered under Section XXXVI of this Act, and whereon no arrear of rent was due on the latest day of payment of Revenue as fixed under Sections III and IV of this Act*

Thirdly. Lands held by Khood Kasht or Kudeemee Ryotts having rights of occupancy at fixed rents or at rents assessable according to fixed rules under the Regulations in force

Thirdly. Tenures of whatsoever description, and farms for terms of years, which have been created since the time of settlement, which have been duly registered under Section XXXVII of this Act, and whereon no arrear of rent was due on the latest day of payment of Revenue as fixed under Sections III and IV of this Act

Fourthly Lands held under bonâ fide leases, at fair rents, temporary or perpetual, for the erection of dwelling-houses, or manufactories, or for mines, gardens, tanks, canals, places of worship, burying grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases

Fourthly Lands whereon dwelling houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk

Fifthly. Farms granted in good faith at fair rents and for specified areas by a former Proprietor, for terms not exceeding twenty years, under written leases, registered within a month from their date Provided that a written notice, specifying full particulars of the position, rent, and area of the lands, the terms of the lease, and the names of the parties shall at the same time be given by the latter to the Collector in every case, and the Collector shall be at liberty to object to the same in the event of his seeing reason to believe that the security of the Public Revenue will be materially affected thereby. The exception declared in this Clause shall not extend to leases objected to by the Collector, by a notification to be fixed up in his Office, with the sanction of the Commissioner, within three months of the date of the notice so made to him by the parties. Provided also, that a purchaser of an Estate at a sale for arrears of Revenue shall be at liberty by suit in Court to set aside all such farms although the same be under written and duly registered leases, and although such notice may have been given as aforesaid, if the same shall not have been granted in good faith at fair rents

And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed in Sections IX and X of Regulation V of 1812 for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he considers the same to have been held at an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years, but not otherwise.

Proviso

Provided always, that nothing in this Section contained shall be construed to entitle any such purchaser as aforesaid to eject any

khoodkhast kudeemee ryot, or any resident hereditary cultivator having a prescriptive right of occupancy at fixed rents, or at rents assessable according to fixed rules under the Regulations in force, or to enhance the rent of any such ryot or cultivator otherwise than in the manner prescribed by the laws in force, or otherwise than the former proprietor at the time of settlement may have been entitled to do.

Registration of old talookdaree tenures.

XXXVI. The following rules for the registration of talookdaree tenures forming the first and second classes excepted in the last preceding Section, shall be observed.

First. The holder of the under-tenure shall be at liberty to apply for the registration of his under-tenure, by petition presented to the Collector of the District in whose jurisdiction the parent estate is situated, within three years from the date of the passing of this Act. The application shall contain the following particulars as far as the same are ascertainable.

1 *The Pergunnah or Pergunnahs in which the tenure is situated*

2 *The denomination of the tenure.*

3 *The name or names of the village or villages whereof the land is composed, or wherein it is situated.*

4 *The area of the land comprised in the tenure, with its boundaries in complete detail.*

5. *The amount of rent and cesses payable annually for the tenure, and the duties, if any, required to be performed on account of it.*

6. The date of the deed constituting the tenure, or the date when the tenure was created.

7. The name of the proprietor who created the tenure.

8. The name of the original holder of the under-tenure.

9. The name of the present possessor, and if he be not the original holder, his relationship to that person, and the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase, or otherwise, and whether he holds jointly or solely.

Secondly. The Collector on receipt of such application shall serve a notice on the recorded proprietor of the estate in which the tenure is situated, with a copy of the application, and shall also cause a notice with a copy of the application annexed to be published at the places and in the manner prescribed by Section VI of this Act, requiring the proprietor or any party interested within thirty days from the date of the issue of the said notice, to file any objection he may have to the registry of the tenure, or to any statement contained in the application. In the absence of any objection, the Collector, if after making due inquiry he is satisfied of the applicant's claim, shall register the tenure. If any objection is made, he shall require both parties, within a reasonable time, to produce their respective proofs, and shall fix a day, by notification in his Cutcherry, for the summary investigation of the case.

If after such summary investigation he shall be of opinion that the applicant has failed to establish his claim, he shall reject the application. If after such investigation he shall be of the contrary opinion, he shall forthwith register the under-tenure in the provisional registry book. Any party dissatisfied with the Collector's award may, within one year from the date of the award, but not afterwards, institute a suit in the Civil Court for the reversal of the same, and after the final decision of the Civil Court, the tenure shall be dealt with according to such decision. If the decision be in favor of the claimant of the tenure, on his producing an authenticated copy of such final decree, the tenure shall be transferred from the provisional registry to the permanent registry book, but if the final decision be otherwise, on the proprietor producing an authenticated copy of the same, the tenure shall be erased from the provisional registry book.

Registration of new talookdaree tenures and farms

XXXVII. The following rules for the registration of Talookdaree tenures and farms, forming the third class of tenures excepted in Section XXXV of this Act, shall be observed.

All the rules prescribed in the last preceding Section shall apply to this class of tenures also, with the following additional rules.

Immediately upon receipt of the application, the Collector shall cause whatever measurement, survey, and local enquiry he

may deem necessary for the security of the Government Revenue, to be made. When no objection on the part of the proprietor of the parent estate, or of any other party interested is filed; or when, if such objection is filed, the Collector after summary investigation may be of opinion that the applicant has established his claim so far as the rights of the proprietor and other private parties are concerned; before registering the tenure the Collector shall satisfy himself that it was created in good faith so far as the interests of the Government Revenue are concerned, and that the rent payable by the holder is not less than is fully sufficient to afford a fair proportion of the Revenue assessed upon the parent estate. If the Collector be not satisfied upon this point, he shall reject the application. If he be satisfied upon this point, he shall register the tenure in the provisional registry book under the rules prescribed in Section XXXVIII of this Act. Provided always that, in the case of such tenures created after the passing of this Act, no application for registration shall be received, unless the same be submitted within one month from the date of the deed constituting the tenure.

Protection of under-tenures provisionally registered.

XXXVIII Talookdaree tenures for the registration of which application shall be made within the prescribed time shall, in case of the sale of the parent estate for arrears of Revenue, be protected pending the summary investigation of the Collector, and shall be protected eventually by provisional or permanent registration, if the award of the Collector upon such

application be in favor of the applicant, or in case of that award being against the applicant, if that award be reversed by the final decision of a Civil Court.

Appeals from Collector's registration awards.

XXXIX. The awards of Collectors passed under Sections XXXVI & XXXVII of this Act shall be open to appeal to the superior Revenue authorities in usual course.

Restriction of jurisdiction of Civil Courts.

XL. No Civil Court shall be competent to interfere with any award of any Revenue authority passed under Sections XXXVI and XXXVII of this Act, founded upon any consideration regarding the good faith in which a tenure may have been created so far as the interests of the Government Revenue are concerned, or the adequacy of the rent for the security of that Revenue.

Protection of under-tenures permanently registered.

XLI. After the expiration of one year from the date of registration in the provisional registry book the Collector shall transfer the registration to the permanent registry book, unless it be shown that a Civil suit has been filed to annul the registration; in which case he shall suspend registration in the permanent registry book pending the final result of such suit. The entry in the permanent registry book shall be an effectual protection of the under-tenure so registered, unless within sixty years from the date of registry a decree be passed at the suit of Government by a Civil Court, pronouncing the registra-

tion to have been obtained by fraud, to the injury of the Government Revenue.

(*Section XXVII of Act No. I of [illegible].)
And it is hereby enacted that

XXIX

competent

XLII*. The purchaser of an estate sold under this Act for the recovery of arrears due on account of the same in Districts other than those mentioned in Section* *XXXV*, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be *entitled* to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except *bonâ fide* leases of ground for the erection of dwelling-houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water-courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing in this Act contained shall be construed to entitle any purchaser of land at a public sale to demand a higher rate of rent from any persons, whose tenure or agreement may be annulled as aforesaid, than was demandable by the former malgoozar, except in cases in which such persons may have held their lands under engagements, stipulating

Rights of a purchaser of an estate not permanently settled sold for its own arrears.

XXVIII And it is hereby enacted that it shall be competent to the local Government, when it shall seem proper at any time before a sale for arrear shall have been actually made, to direct it to be made, subject to the leases, assignments, or other encumbrances, with which a proprietor in possession, his ancestors, or predecessors may have burthened his assessed estate, or to such of them as shall appear proper. In all such cases, notice of the condition imposed by the local Government shall be given by the Collector at the time of calling up the lot for sale, and such further notification shall be made as the local Government may direct: Provided, however, that in case the sale so restricted shall not realize an amount equal to the arrear due at the time of sale, or there shall appear ground to apprehend that by reason of the restriction the future realization of the

Revenue will be encumbered, it shall be competent to the local Government, at any time before such restricted sale shall have become final and conclusive in the manner laid down in Section XIX of this Act, to direct the sale to be cancelled, and a new sale of the estate to be made without other restrictions than those contained in the exceptions specified in Clauses 1 to 5 of Section XXVI of this Act. If after the sale has become final and conclusive occasion should again arise to bring to sale for arrears an estate purchased with a restriction of the above description, it shall at all times be competent to the local Government to direct that the Muhal shall be sold without any other restrictions than those contained in the exceptions specified in Clauses 1 to 5 of Section XXVI of this Act, or with the reservation before reserved. In the former event, should the purchase-money realized by the unrestricted sale exceed in a large amount the sum obtained at the restricted sale, it shall further be competent to the local Government to direct a portion, or the whole of the excess to be paid to persons whose interests having been reserved at the first, shall become void at the second sale.

for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former malgoozars from the old established rates by special favor, or for a consideration, or the like, or in cases in which it may be proved that, according to the custom of the Pergunnah, Mouzah, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government.

(*Section XXIX of Act No I of 1845.)

[1] And it is hereby enacted that

[2] Co-partners of

[3] or unrecorded

[4] other

[5] and under-tenants

*XLIII.** [1]Excepting *sharers in*[2] estates under Butwarrah who may have saved their shares from sale under Sections XXXIII and XXXIV Regulation XIX *of* 1814, *and those who have done so under Section X or Section XI of this Act*, any recorded[3] proprietor or co-partner who may purchase in his own name or in the name of another the estate of which he is proprietor or co-partner; or who by re-purchase or otherwise may recover possession of the said estate after it has been sold for arrears under this Act; and likewise any purchaser of an estate sold for[4] arrears or demands *other* than those accruing upon itself, *and due for the current or last preceding year*, shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale, and shall not acquire any rights in respect to *under-tenants or* ryots[5] which were not possessed by the previous proprietor at the time of the sale of the said estate.

Rights of a purchaser being a sharer in any estate

And of a purchaser of an estate not sold for its own arrears

(†Section XXX of Act I of 1845.)
[1] And it is hereby enacted that

XLIV.† [1] Arrears of rent which on the latest day of payment may be due to the defaulter from his *under*-tenants *or ryots* shall, in the event of a sale, be recoverable by him after the said latest day by any process, except distraint, which might have been used by him for that purpose on or before the said latest day.

Recovery of arrears due to defaulters.

(*Section XXXI of Act No. I of 1845.)
[2] And it is hereby enacted that

*XLV.** [2] Any Collector or Officer exercising the powers of Collector in respect to sales, shall be competent to punish any contempt committed in his presence in open Cutcherry or Office for the time being, by fine, to an extent not exceeding Company's Rupees two hundred, commutable, if not paid, to imprisonment in the Civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector as aforesaid, shall carry his sentence into effect. Provided that an appeal from any order passed under this Section shall lie to the Revenue Commissioner, whose decision shall be final.

Punishment for contempt.

(†Section XXXII of Act No. I of 1845.)
[3] And it is hereby enacted that
[4] XV

XLVI. [3] A default to make good a bid by making the deposit required by Section[4] *XXII* of this Act shall be held to be a contempt.

Default in making deposit to be considered a contempt.

XLVII. When an estate is put up for sale under this Act for the recovery of arrears of Revenue due thereon, if there be no bid, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector may purchase the estate on ac-

Government may purchase at a sale.

count of the Government, in which case the Government shall acquire the property, subject to the provisions of this Act.

XLVIII. The Collector on the part of the Government shall be entitled to demand from applicants under Sections X or XI or Sections XXXVI or XXXVII of this Act, fees and expenses not exceeding the rates specified in Schedule B to this Act annexed, which Schedule shall be taken as part of this Act; and applications under the said Sections shall not be received unless the said fees and charges are tendered therewith.

Fees and charges demandable by Collector

XLIX The provisions of Regulation VII of 1822 *and Regulation IX of* 1825 *shall be in force in every estate in any part of which a measurement, survey, or local enquiry may be made under this Act; and in every estate purchased on account of Government under Section XLVII of this Act.*

Regulations VII. 1822 and IX. 1825 to be in force in certain estates

L. In the construction of this Act the word "Collector" shall include a Deputy Collector, or other Officer exercising by the authority of Government the powers of a Collector or Deputy Collector.

Interpretation

LI[*] [1]The operation of this Act shall be confined to the Provinces[2] *and places in the Presidency* of Fort William in Bengal,[3] *which are or shall be subject to the general Regulations of that Presidency and this Act shall commence to have effect on the 1st of May* 1856.

Application and commencement of this Act

[*]Section XXXIII of Act No I of 1816)

[1]And it is hereby enacted that

[2]of Bengal, Behar, Orissa, and Benares, now subject to the General Regulations, and to the Ceded and Conquered Provinces similarly subject to the General Regulations, under the Government of the Presidencies

[3]and nothing in this Act contained shall affect land in the Town of Calcutta, or the Settlement of Singapore, Penang, or Malacca.

SCHEDULE A.

I certify that A. B. has purchased under Act No. of the Mehal (or share of a Mehal) specified below, standing in the towjee of the District of , and that his purchase took effect on the day of (being the day after that fixed for last day of payment.)

(Signed) D. E. ————

Collector.

SPECIFICATION.

(If of an entire Mehal.)

Towjee number.

Name of Mehal.

Name of the former proprietor.

Sudder jumma.

(If of a share of a Mehal.)

Towjee number of the entire mehal.

Name of the entire Mehal.

Sudder jumma of the entire Mehal.

Description of the share sold.

Subordinate towjee number of the share sold.

Name of the former proprietor of the share sold.

Sudder jumma for which the share sold is separately liable.

SCHEDULE B

Fees

For filing an application under Section X or Section XI for opening a separate account for a share of an entire estate—

If the annual jumma of the share do not exceed 500 *Rupees* 10 0 0

If the annual jumma of the share exceed 500 *Rupees and do not exceed* 2,000 *Rupees, at the rate of two per cent upon the jumma.*

If the annual jumma of the share exceed 2,000 *Rupees* 100 0 0

For filing an application under Section XXXVI or Section XXXVII for the registration of an under-tenure—

If the annual rent of the under-tenure do not exceed 500 *Rupees* . . 25 0 0

If the annual rent of the under-tenure exceed 500 *Rupees and do not exceed* 2,000 *Rupees, at the rate of five per cent upon the rent*

If the annual rent of the under-tenure exceed 2,000 *Rupees, at the above rate up to* 2,000 *Rupees, and at two per cent upon all above that amount*

CHARGES.

For measurement, survey, and local enquiry under the provisions of Section XXXVII.

If the District in which the entire estate is situated has been officially surveyed—at the rate of for every hundred beegas comprised in the under-tenure.

If the District in which the entire estate is situated has not been officially surveyed—at the above rate according to the extent of the under-tenure with an additional charge at one quarter of the above rate according to the extent of the entire estate.

Fees and charges under this Schedule must be tendered according to the terms of the application. After the disposal of the case the account will be adjusted according to the result of any survey that may be made. Any balance due upon this adjustment shall be recovereble as an arrear of Revenue.